

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

FORTY-FIFTH DAY

MORNING SESSION

Senate Chamber, Olympia, Wednesday, February 22, 2006

The Senate was called to order at 10:00 a.m. by President Owen. The Secretary called the roll and announced to the President that all Senators were present with the exception of Senators Benton and McCaslin.

The Sergeant at Arms Color Guard consisting of Pages Courtney McClanahan and Brittany Lawrence, presented the Colors. Pastor Ron Hill of the Southside Baptist Church offered the prayer.

MOTION

On motion of Senator Eide, the reading of the Journal of the previous day was dispensed with and it was approved.

MOTION

There being no objection, the Senate advanced to the first order of business.

REPORTS OF STANDING COMMITTEES

February 21, 2006

ESHB 1020 Prime Sponsor, Committee on Technology, Energy & Communications: Regarding electrical transmission. Reported by Committee on Water, Energy & Environment

MAJORITY recommendation: Do pass as amended. Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Delvin, Fraser, Honeyford, Morton, Mulliken, Pridemore and Regala

Passed to Committee on Rules for second reading.

February 21, 2006

HB 1361 Prime Sponsor, Alexander: Modifying the disbursement of funds by air pollution control agencies. Reported by Committee on Water, Energy & Environment

MAJORITY recommendation: Do pass as amended. Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Delvin, Fraser, Honeyford, Morton, Mulliken, Pridemore and Regala

Passed to Committee on Rules for second reading.

February 21, 2006

E2SHB 1488 Prime Sponsor, Committee on Appropriations: Prohibiting the sale of products that contain polybrominated diphenyl ethers. Reported by Committee on Water, Energy & Environment

MAJORITY recommendation: Do pass as amended. Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Fraser, Pridemore and Regala

MINORITY recommendation: Do not pass. Signed by Senators Delvin, Honeyford, Morton and Mulliken

Passed to Committee on Rules for second reading.

February 20, 2006

SHB 1523 Prime Sponsor, Committee on Finance: Extending a sales and use tax exemption to the construction of

new facilities to be used for the conditioning of vegetable seeds. Revised for 1st Substitute: Extending a sales and use tax exemption to the construction of new facilities to be used for the conditioning of vegetable seed. Reported by Committee on Agriculture & Rural Economic Development

MAJORITY recommendation: Do pass as amended. Signed by Senators Rasmussen, Chair; Shin, Vice Chair; Delvin, Jacobsen, Morton, Schoesler and Sheldon

Passed to Committee on Ways & Means.

February 20, 2006

SHB 2155 Prime Sponsor, Committee on State Government Operations & Accountability: Regarding preservation of state publications by the state library services. Reported by Committee on Government Operations & Elections

MAJORITY recommendation: Do pass as amended. Signed by Senators Kastama, Chair; Berkey, Vice Chair; Benton, Fairley, Haugen, Kline, Pridemore and Roach

Passed to Committee on Ways & Means.

February 22, 2006

2SHB 2292 Prime Sponsor, Committee on Judiciary: Addressing health care liability reform. Reported by Committee on Health & Long-Term Care

MAJORITY recommendation: Do pass as amended. Signed by Senators Keiser, Chair; Thibaudeau, Vice Chair; Benson, Brandland, Deccio, Johnson, Kastama, Kline, Parlette and Poulsen

Passed to Committee on Rules for second reading.

February 21, 2006

HB 2364 Prime Sponsor, Santos: Creating a use tax exemption when converting or merging a federal, foreign, or out-of-state credit union into a state charter. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Doumit, Vice Chair, Operating Budget; Brandland, Fairley, Kohl-Welles, Parlette, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Zarelli

Passed to Committee on Rules for second reading.

February 21, 2006

E2SHB 2393 Prime Sponsor, Committee on Capital Budget: Funding energy freedom projects. Revised for 2nd Substitute: Establishing an energy freedom program. Reported by Committee on Water, Energy & Environment

MAJORITY recommendation: Do pass as amended. Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Fraser, Pridemore and Regala

MINORITY recommendation: Do not pass. Signed by Senators Delvin, Honeyford and Morton

Passed to Committee on Ways & Means.

February 20, 2006

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

SHB 2457 Prime Sponsor, Committee on Finance: Providing excise tax relief for farm machinery and equipment. Revised for 1st Substitute: Authorizing sales and use tax exemptions for replacement parts for farm machinery and equipment. Reported by Committee on Agriculture & Rural Economic Development

MAJORITY recommendation: Do pass. Signed by Senators Rasmussen, Chair; Shin, Vice Chair; Delvin, Jacobsen, Morton, Schoesler and Sheldon

Passed to Committee on Ways & Means.

February 20, 2006

HB 2520 Prime Sponsor, Nixon: Recodifying and making technical corrections to public disclosure law. Reported by Committee on Government Operations & Elections

MAJORITY recommendation: Do pass. Signed by Senators Kastama, Chair; Berkey, Vice Chair; Benton, Fairley, Haugen, Kline, Pridemore and Roach

Passed to Committee on Rules for second reading.

February 20, 2006

SHB 2590 Prime Sponsor, Committee on Finance: Exempting nonprofit organizations organized for zoological purposes from certain excise taxes. Reported by Committee on Natural Resources, Ocean & Recreation

MAJORITY recommendation: Without recommendation. Signed by Senators Jacobsen, Chair; Doumit, Vice Chair; Fraser, Hargrove, Morton, Oke, Spanel and Stevens

Passed to Committee on Ways & Means.

February 21, 2006

HB 2644 Prime Sponsor, Sullivan, P.: Increasing temporarily the statewide cap for the customer assistance public utility tax credit. Reported by Committee on Water, Energy & Environment

MAJORITY recommendation: Do pass. Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Delvin, Fraser, Honeyford, Morton, Mulliken, Pridemore and Regala

Passed to Committee on Ways & Means.

February 21, 2006

2SHB 2645 Prime Sponsor, Committee on Finance: Providing a limited public utility tax credit for gas distribution businesses. Reported by Committee on Water, Energy & Environment

MAJORITY recommendation: Do pass. Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Delvin, Fraser, Honeyford, Morton, Mulliken, Pridemore and Regala

Passed to Committee on Ways & Means.

February 21, 2006

ESHB 2651 Prime Sponsor, Committee on Economic Development, Agriculture & Trade: Regarding disclosure of animal information. Reported by Committee on Agriculture & Rural Economic Development

MAJORITY recommendation: Do pass. Signed by Senators Rasmussen, Chair; Shin, Vice Chair; Delvin, Jacobsen, Morton, Schoesler and Sheldon

Passed to Committee on Rules for second reading.

February 21, 2006

HB 2671 Prime Sponsor, Ericks: Providing excise tax relief by modifying due dates and eliminating an assessment penalty. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass as amended. Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Doumit, Vice Chair, Operating Budget; Brandland, Fairley, Kohl-Welles, Parlette, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Zarelli

Passed to Committee on Rules for second reading.

February 21, 2006

HB 2687 Prime Sponsor, Bailey: Establishing a one thousand dollar minimum monthly benefit for certain plan 1 members of the public employees' retirement system and certain plan 1 members of the teachers' retirement system. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Doumit, Vice Chair, Operating Budget; Brandland, Fairley, Kohl-Welles, Parlette, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Zarelli

Passed to Committee on Rules for second reading.

February 21, 2006

HB 2690 Prime Sponsor, Crouse: Permitting members of the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, the public safety employees' retirement system, plan 1 of the law enforcement officers' and fire fighters' retirement system, and the Washington state patrol retirement system to make a one-time purchase of additional service credit. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Doumit, Vice Chair, Operating Budget; Brandland, Fairley, Kohl-Welles, Parlette, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Zarelli

Passed to Committee on Rules for second reading.

February 21, 2006

SHB 2691 Prime Sponsor, Committee on Appropriations: Creating optional public retirement benefits for justices and judges. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Doumit, Vice Chair, Operating Budget; Brandland, Fairley, Kohl-Welles, Parlette, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Zarelli

Passed to Committee on Rules for second reading.

February 21, 2006

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

HB 2704 Prime Sponsor, O'Brien: Including organized retail theft in crime guidelines. Reported by Committee on Labor, Commerce, Research & Development

MAJORITY recommendation: Without recommendation. Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Honeyford, Keiser and Parlette

Passed to Committee on Judiciary.

February 21, 2006

ESHB 2850 Prime Sponsor, Committee on Finance: Eliminating tax, interest, and penalty provisions for land valued under the open space program. Revised for 1st Substitute: Modifying interest and penalty provisions for land in the current use agricultural program. Reported by Committee on Agriculture & Rural Economic Development

MAJORITY recommendation: Do pass. Signed by Senators Rasmussen, Chair; Shin, Vice Chair; Delvin, Morton, Schoesler and Sheldon

MINORITY recommendation: Do not pass. Signed by Senator Jacobsen

Passed to Committee on Ways & Means.

February 21, 2006

HB 2879 Prime Sponsor, McIntire: Modifying the electronic administration of the real estate excise tax. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Doumit, Vice Chair, Operating Budget; Brandland, Fairley, Kohl-Welles, Parlette, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Zarelli

Passed to Committee on Rules for second reading.

February 21, 2006

SHB 2917 Prime Sponsor, Committee on Local Government: Identifying accessory uses on agricultural lands. Reported by Committee on Agriculture & Rural Economic Development

MAJORITY recommendation: Do pass as amended. Signed by Senators Rasmussen, Chair; Shin, Vice Chair; Delvin, Jacobsen, Morton, Schoesler and Sheldon

Passed to Committee on Rules for second reading.

February 21, 2006

HB 2932 Prime Sponsor, Darneille: Establishing a catastrophic disability allowance under the law enforcement officers' and fire fighters' retirement system, plan 2. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Doumit, Vice Chair, Operating Budget; Brandland, Fairley, Kohl-Welles, Parlette, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Zarelli

Passed to Committee on Rules for second reading.

February 21, 2006

SHB 2933 Prime Sponsor, Committee on Appropriations: Addressing death benefit payments for law enforcement officers' and fire fighters' retirement system, plan 2. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Doumit, Vice Chair, Operating Budget; Brandland, Fairley, Kohl-Welles, Parlette, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Zarelli

Passed to Committee on Rules for second reading.

February 21, 2006

SHB 3033 Prime Sponsor, Committee on Economic Development, Agriculture & Trade: Creating an advisory committee to evaluate animal identification programs. Reported by Committee on Agriculture & Rural Economic Development

MAJORITY recommendation: Do pass. Signed by Senators Rasmussen, Chair; Shin, Vice Chair; Delvin, Jacobsen, Morton, Schoesler and Sheldon

Passed to Committee on Rules for second reading.

February 21, 2006

SHB 3059 Prime Sponsor, Committee on Finance: Clarifying the application of taxes to the financial activities of professional employer organizations. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass. Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Doumit, Vice Chair, Operating Budget; Brandland, Fairley, Kohl-Welles, Parlette, Pridemore, Rasmussen, Roach, Rockefeller, Schoesler and Zarelli

MINORITY recommendation: Do not pass. Signed by Senator Regala

Passed to Committee on Rules for second reading.

February 21, 2006

HB 3114 Prime Sponsor, Murray: Providing a sales and use tax exemption for recovered wood waste boiler equipment. Reported by Committee on Water, Energy & Environment

MAJORITY recommendation: Without recommendation. Signed by Senators Poulsen, Chair; Delvin, Fraser, Honeyford, Morton, Mulliken and Regala

Passed to Committee on Ways & Means.

February 21, 2006

EHB 3159 Prime Sponsor, Linville: Modifying the excise taxation of food products. Reported by Committee on Ways & Means

MAJORITY recommendation: Do pass as amended. Signed by Senators Prentice, Chair; Doumit, Vice Chair, Operating Budget; Brandland, Parlette, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schoesler and Zarelli

MINORITY recommendation: Do not pass. Signed by Senators Fraser, Vice Chair, Capital Budget Chair and Fairley

Passed to Committee on Rules for second reading.

February 20, 2006

ESHB 3222 Prime Sponsor, Committee on Finance: Modifying excise tax exemptions for the handling and processing of livestock manure. Reported by Committee on Agriculture & Rural Economic Development

MAJORITY recommendation: Do pass. Signed by Senators Rasmussen, Chair; Shin, Vice Chair; Delvin, Jacobsen, Morton, Schoesler and Sheldon

Passed to Committee on Ways & Means.

MOTION

On motion of Eide, all measures listed on the Standing Committee report were referred to the committees as designated with the exception of Substitute House Bill No. 2155 which was referred to the Committee on Ways & Means.

MOTION

On motion of Senator Eide, the Senate advanced to the fourth order of business.

MESSAGE FROM THE HOUSE

February 21, 2006

MR. PRESIDENT:

The House has passed the following bill{s):

ENGROSSED SUBSTITUTE HOUSE BILL NO. 2871, and the same is herewith transmitted.

RICHARD NAFZIGER, Chief Clerk

MOTION

On motion of Senator Eide, the Senate advanced to the fifth order of business.

INTRODUCTION AND FIRST READING OF HOUSE BILLS

ESHB 2871 by House Committee on Transportation (originally sponsored by Representatives Murray, Dickerson, Appleton and Simpson)

AN ACT Relating to regional transportation governance; amending RCW 35.58.250, 35.58.260, 36.120.020, 36.120.030, 36.120.040, 36.120.070, 29A.36.071, 36.120.080, 36.120.110, 81.112.030, 35.95A.080, 35.95A.110, 36.120.050, 81.100.080, 81.100.060, 82.14.430, 47.56.076, 36.73.015, and 36.73.020; reenacting and amending RCW 43.79A.040, 43.84.092, and 43.84.092; adding a new section to chapter 36.120 RCW; adding a new section to chapter 82.80 RCW; adding a new section to chapter 47.56 RCW; adding a new section to chapter 47.01 RCW; adding a new chapter to Title 36 RCW; creating a new section; providing an effective date; and providing an expiration date.

Referred to Committee on Transportation.

MOTION

On motion of Senator Eide, the measure listed on the Introduction and First Reading report was referred to the committee as designated.

MOTION

On motion of Senator Eide, the Senate advanced to the eighth order of business.

MOTION

Senator Regala moved adoption of the following resolution:

SENATE RESOLUTION 8720

By Senators Regala and Brandland

WHEREAS, The third week in April is celebrated as the National Shaken Baby Awareness Week; and

WHEREAS, Shaken Baby Syndrome is known as the leading cause of death among physically abused children; and

WHEREAS, Shaken Baby Syndrome is a totally preventable form of child abuse, caused by a caregiver losing control and shaking a baby who is usually under the age of two years; and

WHEREAS, Characteristics of Shaken Baby Syndrome are subdural hemorrhages, damage to the spinal cord and neck, and fractures of the ribs and bones; these injuries may not be immediately noticeable; and

WHEREAS, Symptoms of Shaken Baby Syndrome are extreme irritability, lethargy, poor feeding or sucking, breathing problems, convulsions, vomiting, pale or bluish skin, and a coma; and

WHEREAS, Medical professionals believe that thousands of cases of Shaken Baby Syndrome are being misdiagnosed or not detected; and

WHEREAS, Shaken Baby Syndrome results in permanent and irreversible brain damage or death to an infant and may result in more than \$1,000,000 in medical costs to care for a single, disabled child in just the first year of life; and

WHEREAS, Prevention of Shaken Baby Syndrome includes early recognition of child abuse, parenting support through classes, education of health care personnel and family members, stress reduction for parents, and careful evaluation of those outside the family who take care of children; and

WHEREAS, Efforts to prevent Shaken Baby Syndrome are supported by advocacy groups across the United States that were formed by parents and relatives of children who have been killed or injured by shaking, such as The National Shaken Baby Coalition, The Shaken Baby Association, The Skipper (Shaking Kills: Instead Parents Please Educate and Remember) Initiative, Shaken Baby Alliance, Shaken Baby Prevention, Inc., A voice for Gabbie, Don't Shake Jake, and the Kierra Harrison Foundation, whose mission is to educate the general public and professionals about Shaken Baby Syndrome and to increase support for victims and victims' families in the health care and criminal justice system; and

WHEREAS, The Washington State Legislature strongly supports efforts to protect children from abuse and neglect;

NOW, THEREFORE, BE IT RESOLVED, That the Washington State Senate honor the efforts of those who advocate on behalf of victims of Shaken Baby Syndrome during National Shaken Baby Awareness week, the third week in April, and encourage the people of Washington State to remember the victims of Shaken Baby Syndrome and to participate in educational programs to help prevent Shaken Baby Syndrome.

Senators Regala, Haugen, Mulliken and Brandland spoke in favor of adoption of the resolution.

The President declared the question before the Senate to be the adoption of Senate Resolution No. 8720.

The motion by Senator Regala carried and the resolution was adopted by voice vote.

PERSONAL PRIVILEGE

Senator Eide: "Well, Mr. President, ladies and gentlemen of the Senate. Today is a special, very special day for a very

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

special lady who happens to turn seventy-five. Happy Birthday Senator Margarita Prentice.”

Spokane and Spokane Falls Community Colleges District No. 17.

PERSONAL PRIVILEGE

Senator Brown spoke in favor of the confirmations.

Senator Prentice: “Thank you Mr. President. The question that I was going to ask you was, what just happened to the decorum of the Senate? I want to thank all of you. Do you really have to remind me at seventy-five big ones? One of the things that people forget is that folks my age, woman my age, we’re not old, we’re in our prime. As time goes on I believe we are proving it. One of the great things that happens when you come to the Senate is that you see people, you’ve seen them over time and you’ve seen how great they’ve become and that holds for all of you. Now, I just got kissed by a couple of males here on the floor. I hope that all happens to you at some point. Thank you very much.”

The President declared the question before the Senate to be the confirmations of Gubernatorial Appointment 9023, Ben Cabildo, and Gubernatorial Appointment 9107, Carol Landa-McVicker, as members of the Board of Trustees, Spokane and Spokane Falls Community Colleges District No. 17.

MOTION

On motion of Senator Schoesler, Senators Benton and McCaslin were excused.

PERSONAL PRIVILEGE

APPOINTMENT OF BEN CABILDO

Senator Franklin: “Thank you Mr. President. Well, I would certainly loved also a special birthday greetings to my good friend and colleague. We, sometimes, we don’t talk very often but we connect because the connection is through that delivery of services as a nurse and we sort of understand each other. You are just in your prime. You’re going to be here another twenty-five years. We work together, have known each other, she says forty. Is it forty really? Time went by so quickly. Well, this is seventy-five. It’s your youth, in your prime. I have you by a few.”

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9023, Ben Cabildo as a member of the Board of Trustees, Spokane and Spokane Falls Community Colleges District No. 17 and the appointment was confirmed by the following vote: Yeas, 47; Nays, 0 Absent, 0 Excused, 2.

Voting yea: Senators Benson, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein, Zarelli - 47

Excused: Senators Benton, McCaslin - 2

PERSONAL PRIVILEGE

Senator Deccio: “I’d like to tell Senator Prentice that you get around people my age. It’s nice to have young folks like you around too.”

APPOINTMENT OF CAROL LANDA-MCVICKER

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9107, Carol Landa-McVicker as a member of the Board of Trustees, Spokane and Spokane Falls Community Colleges District No. 17 and the appointment was confirmed by the following vote: Yeas, 47; Nays, 0 ; Absent, 0; Excused, 2.

Voting yea: Senators Benson, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein, Zarelli - 47

Excused: Senators Benton, McCaslin - 2

MOTION

At 10:23 a.m., on motion of Senator Eide, the Senate was declared to be at ease subject to the call of the President.

The Senate was called to order at 11:15 a.m. by President Owen.

Gubernatorial Appointment No. 9107, Carol Landa-McVicker, and Gubernatorial Appointment No. 9023, Ben Cabildo, having received the constitutional majority were declared confirmed as members of the Board of Trustees, Spokane and Spokane Falls Community Colleges District No. 17.

MOTION

On motion of Senator Eide, the Senate reverted to the sixth order of business.

MOTION

On motion of Senator Rockefeller, the rules were suspended, the Senate, with a single vote, considered the confirmations of Gubernatorial Appointment 9023, Ben Cabildo and Gubernatorial Appointment 9107, Carol Landa-McVicker as members of the Board of Trustees, Spokane and Spokane Falls Community Colleges District No. 17 and the vote of the Senate was recorded as a separate vote for each appointment.

MOTION

On motion of Senator Rockefeller, the rules were suspended, the Senate, with a single vote, considered the confirmations of Gubernatorial Appointment 9259, Paul McDonald; Gubernatorial Appointment 9283, Patricia Whitefoot; Gubernatorial Appointment No. 9270, Lida Parker; Gubernatorial Appointment No. 9308, Larry Sanchez and

Senator Brown moved that Gubernatorial Appointment No. 9023, Ben Cabildo and Gubernatorial Appointment No. 9107, Carol Lander-McVicker as members of the Board of Trustees,

FORTY-FIFTH DAY, FEBRUARY 22, 2006

Gubernatorial Appointment No. 9338, James Carvo as members of the Board of Trustees, Yakima Valley Community College District No. 16 and the vote of the Senate was recorded as a separate vote for each appointment.

MOTION

Senator Deccio moved that Gubernatorial Appointment No. 9259, Paul McDonald, Gubernatorial Appointment No. 9283, Patricia Whitefoot, Gubernatorial Appointment No. 9270, Lisa Parker, Gubernatorial Appointment No. 9308, Larry Sanchez and Gubernatorial Appointment No. 9338, James Carvo as members of the Board of Trustees, Yakima Valley Community College District No. 16, be confirmed.

Senator Deccio spoke in favor of the confirmations.

MOTION

On motion of Senator Schoesler, Senator Roach was excused.

APPOINTMENT OF PAUL MCDONALD

The President declared the question before the Senate to be the confirmation of Gubernatorial Appointment No. 9259, Paul McDonald, Gubernatorial Appointment No. 9283, Patricia Whitefoot, Gubernatorial Appointment No. 9270, Lisa Parker, Gubernatorial Appointment No. 9308, Larry Sanchez and Gubernatorial Appointment No. 9338, James Carvo as members of the Board of Trustees, Yakima Valley Community College District No. 16.

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9259, Paul McDonald as a member of the Board of Trustees, Yakima Valley Community College District No. 16 and the appointment was confirmed by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benson, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein, Zarelli - 47

Excused: Senators Benton, McCaslin - 2

APPOINTMENT OF PATRICIA WHITEFOOT

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9283, Patricia Whitefoot as a member of the Board of Trustees, Yakima Valley Community College District No. 16 and the appointment was confirmed by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benson, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel,

2006 REGULAR SESSION

Stevens, Swecker, Thibaudeau, Weinstein, Zarelli - 47
Excused: Senators Benton, McCaslin - 2

APPOINTMENT OF LISA PARKER

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9270, Lisa Parker as a member of the Board of Trustees, Yakima Valley Community College District No. 16 and the appointment was confirmed by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benson, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein, Zarelli - 47

Excused: Senators Benton, McCaslin - 2

APPOINTMENT OF LARRY SANCHEZ

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9308, Larry Sanchez as a member of the Board of Trustees, Yakima Valley Community College District No. 16 and the appointment was confirmed by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benson, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein, Zarelli - 47

Excused: Senators Benton, McCaslin - 2

APPOINTMENT OF JAMES CARVO

The Secretary called the roll on the confirmation of Gubernatorial Appointment No. 9338, James Carvo as a member of the Board of Trustees, Yakima Community College District No. 16 and the appointment was confirmed by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benson, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein, Zarelli - 47

Excused: Senators Benton, McCaslin - 2

Gubernatorial Appointment No. 9338, James Carvo; Gubernatorial Appointment No. 9259, Paul McDonald; Gubernatorial Appointment No. 9283, Patricia Whitefoot; Gubernatorial Appointment No. 9270, Lisa Parker, and Gubernatorial Appointment No. 9308, Larry Sanchez having received the constitutional majority were declared confirmed as members of the Board of Trustees, Yakima Community College District No. 16.

SECOND READING

SENATE BILL NO. 6379, by Senators Poulsen, Morton, Fraser, Finkbeiner, Rockefeller and Rasmussen

Increasing temporarily the statewide cap for the customer assistance public utility tax credit.

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

The measure was read the second time.

MOTION

On motion of Senator Poulsen, the rules were suspended, Senate Bill No. 6379 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Poulsen and Morton spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Senate Bill No. 6379.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 6379 and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benson, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 48

Excused: Senator Benton - 1

SENATE BILL NO. 6379, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SENATE BILL NO. 6686, by Senators Prentice, Esser, Kastama, Johnson, Kline, Finkbeiner, Weinstein, Keiser, Berkey and McAuliffe

Authorizing a local sales and use tax that is credited against the state sales and use tax.

MOTIONS

On motion of Senator Prentice, Substitute Senate Bill No. 6686 was substituted for Senate Bill No. 6686 and the substitute bill was placed on the second reading and read the second time.

On motion of Senator Prentice, the rules were suspended, Substitute Senate Bill No. 6686 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Prentice and Esser spoke in favor of passage of the bill.

Senators Mulliken and Honeyford spoke against passage of the bill.

The President declared the question before the Senate to be the final passage of Substitute Senate Bill No. 6686.

ROLL CALL

The Secretary called the roll on the final passage of Substitute Senate Bill No. 6686 and the bill passed the Senate by the following vote: Yeas, 38; Nays, 10; Absent, 0; Excused, 1.

Voting yea: Senators Benson, Berkey, Brandland, Brown, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, Oke, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Thibaudeau and Weinstein - 38

Voting nay: Senators Carrell, Hewitt, Honeyford, McCaslin, Morton, Mulliken, Parlette, Stevens, Swecker and Zarelli - 10

Excused: Senator Benton - 1

SUBSTITUTE SENATE BILL NO. 6686, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Regala, Senator Prentice was excused.

SECOND READING

SENATE BILL NO. 6787, by Senators Rockefeller, Poulsen, Haugen and Oke

Modifying funding for local government passenger ferry service. Revised for 1st Substitute: Providing funding for local government passenger ferry service.

MOTION

On motion of Senator Rockefeller, Substitute Senate Bill No. 6787 was substituted for Senate Bill No. 6787 and the substitute bill was placed on the second reading and read the second time.

MOTION

Senator Poulsen moved that the following amendment by Senator Poulsen be adopted.

On page 2, line 22, after "as", strike all material through the end of line 25, and insert the following:

"either:

(1) a local government assumes the Vashon to Seattle passenger-only ferry route, and provides a level of service for the route that meets or exceeds the state level. The successor entity assuming the route shall assume any existing labor contract governing service on the Vashon to Seattle passenger-only ferry route; or

(2) a legislative authority of a county with a population over one million persons and having a boundary on the Puget Sound creates a ferry district under chapter 36.54 RCW, assumes service among Vashon, Southworth, and Seattle on or before June 30, 2007, and provides a level of service that meets or exceeds the state level of service on the Vashon to Seattle passenger-only ferry route. The successor entity assuming the route shall assume any existing labor contract governing service on the Vashon to Seattle passenger-only ferry route. A successor entity under this subsection shall enter into an interlocal agreement with the public transportation benefit area serving the Southworth ferry terminal within 30 days of beginning Southworth ferry

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

service."

Senator Poulsen spoke in favor of adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Poulsen on page 2, line 22 to Substitute Senate Bill No. 6787.

The motion by Senator Poulsen carried and the amendment was adopted by voice vote.

MOTION

On motion of Senator Rockefeller, the rules were suspended, Engrossed Substitute Senate Bill No. 6787 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Rockefeller, Oke, Haugen, Mulliken and Jacobsen spoke in favor of passage of the bill.

POINT OF ORDER

Senator Roach: "Yes, I rise to object to bringing someone's name up like that that's not a member of the body. Criticize if you want in the body, I suppose, but really I think that's out of place."

REPLY BY THE PRESIDENT

President Owen: "Senator Roach, there is no rule against bringing another person's name into a debate that I'm aware of, unless it's a member."

POINT OF ORDER

Senator Jacobsen: "Would it be more appropriate if I talked about the initiative and referendum system? How it's impacted governmental policy? Is that ok?"

Senator Roach: "I'd be happy to respond. I think that was directed at me. I think the initiative process...."

REPLY BY THE PRESIDENT

President Owen: "Senator Roach, you both are venturing off and beyond the subject matter at hand, which is a rule I can enforce."

The President declared the question before the Senate to be the final passage of Engrossed Substitute Senate Bill No. 6787.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Substitute Senate Bill No. 6787 and the bill passed the Senate by the following vote: Yeas, 46; Nays, 1; Absent, 0; Excused, 2.

Voting yea: Senators Benson, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 46

Voting nay: Senator Esser - 1

Excused: Senators Benton and Prentice - 2

ENGROSSED SUBSTITUTE SENATE BILL NO. 6787, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

SECOND READING

SENATE BILL NO. 6680, by Senators Brandland, Haugen and Rasmussen

Implementing a biometric matching system for driver's licenses and identicards.

The measure was read the second time.

MOTION

On motion of Senator Haugen, the rules were suspended, Senate Bill No. 6680 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senators Brandland and Stevens spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Senate Bill No. 6680.

ROLL CALL

The Secretary called the roll on the final passage of Senate Bill No. 6680 and the bill passed the Senate by the following vote: Yeas, 47; Nays, 0; Absent, 0; Excused, 2.

Voting yea: Senators Benson, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 47

Excused: Senators Benton and Prentice - 2

SENATE BILL NO. 6680, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

On motion of Senator Eide, the Senate advanced to the seventh order of business.

MOTION

On motion of Senator Oke, the rules were suspended, Senate Bill No. 5319 was returned to second reading for the purpose of amendment.

SECOND READING

SENATE BILL NO. 5319, by Senators Oke, Doumit, Roach, Hargrove, Honeyford, Swecker, Schoesler, Rasmussen,

FORTY-FIFTH DAY, FEBRUARY 22, 2006

Berkey, Delvin, Morton, Regala, Sheldon, Stevens, Johnson and Mulliken

2006 REGULAR SESSION

Concerning animal trapping.

The measure was read the second time.

MOTION

Senator Oke moved that the following amendment by Senators Oke and Jacobsen be adopted.

Beginning on page 2, line 20, strike all of section 2 and insert the following:

"Sec. 2. RCW 77.08.010 and 2005 c 104 s 1 are each amended to read as follows:

As used in this title or rules adopted under this title, unless the context clearly requires otherwise:

- (1) "Director" means the director of fish and wildlife.
- (2) "Department" means the department of fish and wildlife.
- (3) "Commission" means the state fish and wildlife commission.
- (4) "Person" means and includes an individual; a corporation; a public or private entity or organization; a local, state, or federal agency; all business organizations, including corporations and partnerships; or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.
- (5) "Fish and wildlife officer" means a person appointed and commissioned by the director, with authority to enforce this title and rules adopted pursuant to this title, and other statutes as prescribed by the legislature. Fish and wildlife officer includes a person commissioned before June 11, 1998, as a wildlife agent or a fisheries patrol officer.
- (6) "Ex officio fish and wildlife officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fish and wildlife officer" includes special agents of the national marine fisheries service, state parks commissioned officers, United States fish and wildlife special agents, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.
- (7) "To hunt" and its derivatives means an effort to kill, injure, capture, or harass a wild animal or wild bird.
- (8) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.
- (9) "To fish," "to harvest," and "to take," and their derivatives means an effort to kill, injure, harass, or catch a fish or shellfish.
- (10) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that conform to the special restrictions or physical descriptions established by rule of the commission or that have otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission. "Open season" includes the first and last days of the established time.
- (11) "Closed season" means all times, manners of taking, and places or waters other than those established by rule of the

commission as an open season. "Closed season" also means all hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission as an open season.

(12) "Closed area" means a place where the hunting of some or all species of wild animals or wild birds is prohibited.

(13) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing or harvesting is prohibited.

(14) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(15) "Bag limit" means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

(16) "Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, old world rats and mice of the family Muridae of the order Rodentia, or those fish, shellfish, and marine invertebrates classified as food fish or shellfish by the director. The term "wildlife" includes all stages of development and the bodily parts of wildlife members.

(17) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state and the species *Rana catesbeiana* (bullfrog). The term "wild animal" does not include feral domestic mammals or old world rats and mice of the family Muridae of the order Rodentia.

(18) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(19) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(20) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(21) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(22) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(23) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(24) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(25) "Deleterious exotic wildlife" means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

(26) "Game farm" means property on which wildlife is held or raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(27) "Person of disability" means a permanently disabled person who is not ambulatory without the assistance of a wheelchair, crutches, or similar devices.

(28) "Fish" includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters. The term "fish" includes all stages of development and the bodily parts of fish species.

(29) "Raffle" means an activity in which tickets bearing an

individual number are sold for not more than twenty-five dollars each and in which a permit or permits are awarded to hunt or for access to hunt big game animals or wild turkeys on the basis of a drawing from the tickets by the person or persons conducting the raffle.

(30) "Youth" means a person fifteen years old for fishing and under sixteen years old for hunting.

(31) "Senior" means a person seventy years old or older.

(32) "License year" means the period of time for which a recreational license is valid. The license year begins April 1st, and ends March 31st.

(33) "Saltwater" means those marine waters seaward of river mouths.

(34) "Freshwater" means all waters not defined as saltwater including, but not limited to, rivers upstream of the river mouth, lakes, ponds, and reservoirs.

(35) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(36) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(37) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(38) "Resident" means:

(a) A person who has maintained a permanent place of abode within the state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within the state, and who is not licensed to hunt or fish as a resident in another state; and

(b) A person age eighteen or younger who does not qualify as a resident under (a) of this subsection, but who has a parent that qualifies as a resident under (a) of this subsection.

(39) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(40) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that shall not be taken except as authorized by rule of the commission. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(41) "Commercial" means related to or connected with buying, selling, or bartering.

(42) "To process" and its derivatives mean preparing or preserving fish, wildlife, or shellfish.

(43) "Personal use" means for the private use of the individual taking the fish or shellfish and not for sale or barter.

(44) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel.

(45) "Fishery" means the taking of one or more particular species of fish or shellfish with particular gear in a particular geographical area.

(46) "Limited-entry license" means a license subject to a license limitation program established in chapter 77.70 RCW.

(47) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta.

(48) "Trafficking" means offering, attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife,

or deleterious exotic wildlife.

(49) "Invasive species" means a plant species or a nonnative animal species that either:

(a) Causes or may cause displacement of, or otherwise threatens, native species in their natural communities;

(b) Threatens or may threaten natural resources or their use in the state;

(c) Causes or may cause economic damage to commercial or recreational activities that are dependent upon state waters; or

(d) Threatens or harms human health.

(50) "Prohibited aquatic animal species" means an invasive species of the animal kingdom that has been classified as a prohibited aquatic animal species by the commission.

(51) "Regulated aquatic animal species" means a potentially invasive species of the animal kingdom that has been classified as a regulated aquatic animal species by the commission.

(52) "Unregulated aquatic animal species" means a nonnative animal species that has been classified as an unregulated aquatic animal species by the commission.

(53) "Unlisted aquatic animal species" means a nonnative animal species that has not been classified as a prohibited aquatic animal species, a regulated aquatic animal species, or an unregulated aquatic animal species by the commission.

(54) "Aquatic plant species" means an emergent, submersed, partially submersed, free-floating, or floating-leaving plant species that grows in or near a body of water or wetland.

(55) "Retail-eligible species" means commercially harvested salmon, crab, and sturgeon.

(56) "Body-gripping trap" means a steel trap that grips an animal's body or body part, including steel-jawed foothold trap, neck snare, or foot snare.

(57) "Raw fur" means a pelt that has not been processed for purposes of retail sale.

(58) "Animal problem" means damage, injury, or reasonable threat of damage or injury, caused by furbearing mammals, unclassified wildlife, or deleterious exotic wildlife to: Public or private property or resources; livestock or other domestic animals; or human health or safety.

(59) "Nuisance wildlife" means moles, mice, rats, mountain beavers, gophers, nutria, and other wildlife so designated by the commission by rule.

(60) "Nuisance bird problem" means damage, injury, or reasonable threat of damage or injury, caused by avian species to: Public or private property or resources; human health; or public safety.

(61) "Programmatic trapping permit" means a permit issued by the director for the following purposes: (a) For furbearer management unit purposes; (b) to prevent damage or injury, or a reasonable threat of damage or injury, to (i) public or private property or resources; (ii) livestock or other domestic animals; (iii) agricultural, timber, and horticultural resources; (iv) human health or safety; or (v) other purposes so designated by the commission by rule.

(62) "Conditional use trapping permit" means an emergency permit, limited to specific times, purposes, and areas, issued by the director to address unanticipated and immediate damage or injury to public or private property or resources or other purposes designated by the commission by rule.

(63) "Restricted use trapping permit" means a permit issued by the director to protect either sensitive or endangered species and habitat, or both, or other purposes designated by the commission by rule."

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

On page 12, line 31, after "July 1," strike "2005" and insert "2006"

order of business.

Senator Oke spoke in favor of adoption of the amendment.

SECOND READING

The President declared the question before the Senate to be the adoption of the amendment by Senators Oke and Jacobsen on page 2, line 20 to Senate Bill No. 5319.

SECOND SUBSTITUTE HOUSE BILL NO. 2292, by House Committee on Judiciary (originally sponsored by Representatives Lantz, Cody, Campbell, Kirby, Flannigan, Williams, Linville, Springer, Clibborn, Wood, Fromhold, Morrell, Hunt, Moeller, Green, Kilmer, Conway, O'Brien, Sells, Kenney, Kessler, Chase, Upthegrove, Ormsby, Lovick, McCoy and Santos)

The motion by Senator Oke carried and the amendment was adopted by voice vote.

Addressing health care liability reform.

MOTION

Senator Regala moved that the following amendment by Senator Regala be adopted.

The measure was read the second time.

On page 14, beginning on line 15 strike all of section 11.

Re-number sections consecutively and correct internal references.

MOTION

On page 1, line 3 of the title, after "77.15.192", strike "; and declaring an emergency".

Senator Keiser moved that the following committee striking amendment by the Committee on Health & Long-Term Care be adopted.

Senator Regala spoke in favor of adoption of the amendment.

Strike everything after the enacting clause and insert the following:

Senator Jacobsen spoke against adoption of the amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Regala on page 14, line 15 to Senate Bill No. 5319.

"NEW SECTION. Sec. 1. The legislature finds that access to safe, affordable health care is one of the most important issues facing the citizens of Washington state. The legislature further finds that the rising cost of medical malpractice insurance has caused some physicians, particularly those in high-risk specialties such as obstetrics and emergency room practice, to be unavailable when and where the citizens need them the most. The answers to these problems are varied and complex, requiring comprehensive solutions that encourage patient safety practices, increase oversight of medical malpractice insurance, and making the civil justice system more understandable, fair, and efficient for all the participants.

The motion by Senator Regala failed and the amendment was not adopted by voice vote.

MOTION

On motion of Senator Oke, the rules were suspended, Engrossed Senate Bill No. 5319 was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

Senator Oke spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Engrossed Senate Bill No. 5319.

It is the intent of the legislature to prioritize patient safety and the prevention of medical errors above all other considerations as legal changes are made to address the problem of high malpractice insurance premiums. Thousands of patients are injured each year as a result of medical errors, many of which can be avoided by supporting health care providers, facilities, and carriers in their efforts to reduce the incidence of those mistakes. It is also the legislature's intent to provide incentives to settle cases before resorting to court, and to provide the option of a more fair, efficient, and streamlined alternative to trials for those for whom settlement negotiations do not work. Finally, it is the intent of the legislature to provide the insurance commissioner with the tools and information necessary to regulate medical malpractice insurance rates and policies so that they are fair to both the insurers and the insured.

ROLL CALL

The Secretary called the roll on the final passage of Engrossed Senate Bill No. 5319 and the bill passed the Senate by the following vote: Yeas, 35; Nays, 11; Absent, 1; Excused, 2.

PART I - PATIENT SAFETY

Voting yea: Senators Benson, Berkey, Brandland, Deccio, Delvin, Doumit, Finkbeiner, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Weinstein and Zarelli - 35

Encouraging Patient Safety Through Communications With Patients

Voting nay: Senators Carrell, Eide, Esser, Fairley, Franklin, Fraser, Kohl-Welles, McAuliffe, Poulsen, Pridemore and Thibaudeau - 11

Absent: Senator Brown - 1

Excused: Senators Benton and Prentice - 2

ENGROSSED SENATE BILL NO. 5319, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

Sec. 101. RCW 5.64.010 and 1975-'76 2nd ex.s. c 56 s 3 are each amended to read as follows:

MOTION

(1) In any civil action against a health care provider for personal injuries which is based upon alleged professional negligence ~~((and which is against:~~

On motion of Senator Eide, the Senate reverted to the sixth

~~(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician,~~

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

osteopathic physician, dentist, nurse, optometrist, podiatrist, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative;

— (2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

— (3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative;), or in any arbitration or mediation proceeding related to such civil action, evidence of furnishing or offering or promising to pay medical, hospital, or similar expenses occasioned by an injury is not admissible ((to prove liability for the injury)).

(2)(a) In a civil action against a health care provider for personal injuries that is based upon alleged professional negligence, or in any arbitration or mediation proceeding related to such civil action, a statement, affirmation, gesture, or conduct identified in (b) of this subsection is not admissible as evidence if:

(i) It was conveyed by a health care provider to the injured person, or to a person specified in RCW 7.70.065 (1)(a) or (2)(a) within thirty days of the act or omission that is the basis for the allegation of professional negligence or within thirty days of the time the health care provider discovered the act or omission that is the basis for the allegation of professional negligence, whichever period expires later; and

(ii) It relates to the discomfort, pain, suffering, injury, or death of the injured person as the result of the alleged professional negligence.

(b) (a) of this subsection applies to:

(i) Any statement, affirmation, gesture, or conduct expressing apology, fault, sympathy, commiseration, condolence, compassion, or a general sense of benevolence; or

(ii) Any statement or affirmation regarding remedial actions that may be taken to address the act or omission that is the basis for the allegation of negligence.

Encouraging Reports of Unprofessional Conduct or Lack of Capacity to Practice Safely

Sec. 102. RCW 4.24.260 and 1994 sp.s. c 9 s 701 are each amended to read as follows:

~~((Physicians licensed under chapter 18.71 RCW, dentists licensed under chapter 18.32 RCW, and pharmacists licensed under chapter 18.64 RCW))~~ Any member of a health profession listed under RCW 18.130.040 who, in good faith, makes a report, files charges, or presents evidence against another member of ((their)) a health profession based on the claimed ((incompetency or gross misconduct)) unprofessional conduct as provided in RCW 18.130.180 or inability to practice with reasonable skill and safety to consumers by reason of any physical or mental condition as provided in RCW 18.130.170 of such person before the ((medical quality assurance commission established under chapter 18.71 RCW, in a proceeding under

chapter 18.32 RCW, or to the board of pharmacy under RCW 18.64.160)) agency, board, or commission responsible for disciplinary activities for the person's profession under chapter 18.130 RCW, shall be immune from civil action for damages arising out of such activities. A person prevailing upon the good faith defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense.

Medical Quality Assurance Commission Consumer Membership

Sec. 103. RCW 18.71.015 and 1999 c 366 s 4 are each amended to read as follows:

The Washington state medical quality assurance commission is established, consisting of thirteen individuals licensed to practice medicine in the state of Washington under this chapter, two individuals who are licensed as physician assistants under chapter 18.71A RCW, and ~~((four))~~ six individuals who are members of the public. At least two of the public members shall not be from the health care industry. Each congressional district now existing or hereafter created in the state must be represented by at least one physician member of the commission. The terms of office of members of the commission are not affected by changes in congressional district boundaries. Public members of the commission may not be a member of any other health care licensing board or commission, or have a fiduciary obligation to a facility rendering health services regulated by the commission, or have a material or financial interest in the rendering of health services regulated by the commission.

The members of the commission shall be appointed by the governor. Members of the initial commission may be appointed to staggered terms of one to four years, and thereafter all terms of appointment shall be for four years. The governor shall consider such physician and physician assistant members who are recommended for appointment by the appropriate professional associations in the state. In appointing the initial members of the commission, it is the intent of the legislature that, to the extent possible, the existing members of the board of medical examiners and medical disciplinary board repealed under section 336, chapter 9, Laws of 1994 sp. sess. be appointed to the commission. No member may serve more than two consecutive full terms. Each member shall hold office until a successor is appointed.

Each member of the commission must be a citizen of the United States, must be an actual resident of this state, and, if a physician, must have been licensed to practice medicine in this state for at least five years.

The commission shall meet as soon as practicable after appointment and elect officers each year. Meetings shall be held at least four times a year and at such place as the commission determines and at such other times and places as the commission deems necessary. A majority of the commission members appointed and serving constitutes a quorum for the transaction of commission business.

The affirmative vote of a majority of a quorum of the commission is required to carry any motion or resolution, to adopt any rule, or to pass any measure. The commission may appoint panels consisting of at least three members. A quorum for the transaction of any business by a panel is a minimum of

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

three members. A majority vote of a quorum of the panel is required to transact business delegated to it by the commission.

Each member of the commission shall be compensated in accordance with RCW 43.03.265 and in addition thereto shall be reimbursed for travel expenses incurred in carrying out the duties of the commission in accordance with RCW 43.03.050 and 43.03.060. Any such expenses shall be paid from funds appropriated to the department of health.

Whenever the governor is satisfied that a member of a commission has been guilty of neglect of duty, misconduct, or malfeasance or misfeasance in office, the governor shall file with the secretary of state a statement of the causes for and the order of removal from office, and the secretary shall forthwith send a certified copy of the statement of causes and order of removal to the last known post office address of the member.

Vacancies in the membership of the commission shall be filled for the unexpired term by appointment by the governor.

The members of the commission are immune from suit in an action, civil or criminal, based on its disciplinary proceedings or other official acts performed in good faith as members of the commission.

Whenever the workload of the commission requires, the commission may request that the secretary appoint pro tempore members of the commission. When serving, pro tempore members of the commission have all of the powers, duties, and immunities, and are entitled to all of the emoluments, including travel expenses, of regularly appointed members of the commission.

Health Care Provider Discipline

Sec. 104. RCW 18.130.160 and 2001 c 195 s 1 are each amended to read as follows:

Upon a finding, after hearing, that a license holder or applicant has committed unprofessional conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the disciplining authority may consider the imposition of sanctions, taking into account any prior findings of fact under RCW 18.130.110, any stipulations to informal disposition under RCW 18.130.172, and any action taken by other in-state or out-of-state disciplining authorities, and issue an order providing for one or any combination of the following:

- (1) Revocation of the license;
- (2) Suspension of the license for a fixed or indefinite term;
- (3) Restriction or limitation of the practice;
- (4) Requiring the satisfactory completion of a specific program of remedial education or treatment;
- (5) The monitoring of the practice by a supervisor approved by the disciplining authority;
- (6) Censure or reprimand;
- (7) Compliance with conditions of probation for a designated period of time;
- (8) Payment of a fine for each violation of this chapter, not to exceed five thousand dollars per violation. Funds received shall be placed in the health professions account;
- (9) Denial of the license request;
- (10) Corrective action;
- (11) Refund of fees billed to and collected from the consumer;
- (12) A surrender of the practitioner's license in lieu of other sanctions, which must be reported to the federal data bank.

Any of the actions under this section may be totally or partly stayed by the disciplining authority. In determining what action is appropriate, the disciplining authority must first consider what sanctions are necessary to protect or compensate the public. Only after such provisions have been made may the disciplining authority consider and include in the order requirements designed to rehabilitate the license holder or applicant. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant.

The licensee or applicant may enter into a stipulated disposition of charges that includes one or more of the sanctions of this section, but only after a statement of charges has been issued and the licensee has been afforded the opportunity for a hearing and has elected on the record to forego such a hearing. The stipulation shall either contain one or more specific findings of unprofessional conduct or inability to practice, or a statement by the licensee acknowledging that evidence is sufficient to justify one or more specified findings of unprofessional conduct or inability to practice. The stipulation entered into pursuant to this subsection shall be considered formal disciplinary action for all purposes.

Increasing Patient Safety Through Disclosure and Analysis of Adverse Events

NEW SECTION. Sec. 105. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adverse health event" or "adverse event" means the list of serious reportable events adopted by the national quality forum in 2002, in its consensus report on serious reportable events in health care. The department shall update the list, through adoption of rules, as subsequent changes are made by the national quality forum. The term does not include an incident.

(2) "Ambulatory surgical facility" means any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization, whether or not the facility is certified under Title XVIII of the federal social security act.

(3) "Childbirth center" means a facility licensed under chapter 18.46 RCW.

(4) "Correctional medical facility" means a part or unit of a correctional facility operated by the department of corrections under chapter 72.10 RCW that provides medical services for lengths of stay in excess of twenty-four hours to offenders.

(5) "Department" means the department of health.

(6) "Health care worker" means an employee, independent contractor, licensee, or other individual who is directly involved in the delivery of health services in a medical facility.

(7) "Hospital" means a facility licensed under chapter 70.41 RCW.

(8) "Incident" means an event, occurrence, or situation involving the clinical care of a patient in a medical facility that:

(a) Results in unanticipated injury to a patient that is not related to the natural course of the patient's illness or underlying condition and does not constitute an adverse event; or

(b) Could have injured the patient but did not either cause an unanticipated injury or require the delivery of additional health care services to the patient.

"Incident" does not include an adverse event.

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

(9) "Independent entity" means that entity that the department of health contracts with under section 108 of this act to receive notifications and reports of adverse events and incidents, and carry out the activities specified in section 108 of this act.

(10) "Medical facility" means a childbirth center, hospital, psychiatric hospital, or correctional medical facility. An ambulatory surgical facility shall be considered a medical facility for purposes of this chapter upon the effective date of any requirement for state registration or licensure of ambulatory surgical facilities.

(11) "Psychiatric hospital" means a hospital facility licensed as a psychiatric hospital under chapter 71.12 RCW.

NEW SECTION. Sec. 106. (1) The legislature intends to establish an adverse health events and incident reporting system that is designed to facilitate quality improvement in the health care system, improve patient safety and decrease medical errors in a nonpunitive manner. The reporting system shall not be designed to punish errors by health care practitioners or health care facility employees.

(2) Each medical facility shall notify the department of health regarding the occurrence of any adverse event and file a subsequent report as provided in this section. Notification must be submitted to the department within forty-eight hours of confirmation by the medical facility that an adverse event has occurred. A subsequent report must be submitted to the department within forty-five days after confirmation by the medical facility that an adverse event has occurred. The notification and report shall be submitted to the department using the internet-based system established under section 108(2) of this act.

(3) The notification and report shall be filed in a format specified by the department after consultation with medical facilities and the independent entity. The format shall identify the facility, but shall not include any identifying information for any of the health care professionals, facility employees, or patients involved. This provision does not modify the duty of a hospital to make a report to the department of health or a disciplinary authority if a licensed practitioner has committed unprofessional conduct as defined in RCW 18.130.180.

(4) As part of the report filed under this section, the medical facility must conduct a root cause analysis of the event, describe the corrective action plan that will be implemented consistent with the findings of the analysis, or provide an explanation of any reasons for not taking corrective action. The department shall adopt rules, in consultation with medical facilities and the independent entity, related to the form and content of the root cause analysis and corrective action plan. In developing the rules, consideration shall be given to existing standards for root cause analysis or corrective action plans adopted by the joint commission on accreditation of health facilities and other national or governmental entities.

(5) If, in the course of investigating a complaint received from an employee of a medical facility, the department determines that the facility has not reported an adverse event or undertaken efforts to investigate the occurrence of an adverse event, the department shall direct the facility to report or to undertake an investigation of the event.

(6) The protections of RCW 43.70.075 apply to reports of adverse events that are submitted in good faith by employees of medical facilities.

NEW SECTION. Sec. 107. (1) The department shall:

(a) Receive and investigate, where necessary, notifications and reports of adverse events, including root cause analyses and corrective action plans submitted as part of reports, and communicate to individual facilities the department's conclusions, if any, regarding an adverse event reported by a facility; and

(b) Adopt rules as necessary to implement this chapter.

(2) The department may enforce the reporting requirements of section 106 of this act using their existing enforcement authority provided in chapter 18.46 RCW for childbirth centers, chapter 70.41 RCW for hospitals, and chapter 71.12 RCW for psychiatric hospitals.

NEW SECTION. Sec. 108. (1) The department shall contract with a qualified, independent entity to receive notifications and reports of adverse events and incidents, and carry out the activities specified in this section. In establishing qualifications for, and choosing the independent entity, the department shall strongly consider the patient safety organization criteria included in the federal patient safety and quality improvement act of 2005, P.L. 109-41, and any regulations adopted to implement this chapter.

(2) The independent entity shall:

(a) In collaboration with the department of health, establish an internet-based system for medical facilities and the health care workers of a medical facility to submit notifications and reports of adverse events and incidents, which shall be accessible twenty-four hours a day, seven days a week. The system shall be a portal to report both adverse events and incidents, and notifications and reports of adverse events shall be immediately transmitted to the department. The system shall be a secure system that protects the confidentiality of personal health information and provider and facility specific information submitted in notifications and reports, including appropriate encryption and an accurate means of authenticating the identify of users of the system;

(b) Collect, analyze, and evaluate data regarding notifications and reports of adverse events and incidents, including the identification of performance indicators and patterns in frequency or severity at certain medical facilities or in certain regions of the state;

(c) Develop recommendations for changes in health care practices and procedures, which may be instituted for the purpose of reducing the number or severity of adverse events and incidents;

(d) Directly advise reporting medical facilities of immediate changes that can be instituted to reduce adverse events or incidents;

(e) Issue recommendations to medical facilities on a facility-specific or on a statewide basis regarding changes, trends, and improvements in health care practices and procedures for the purpose of reducing the number and severity of adverse events or incidents. Prior to issuing recommendations, consideration shall be given to the following factors: Expectation of improved quality of care, implementation feasibility, other relevant implementation practices, and the cost impact to patients, payers, and medical facilities. Statewide recommendations shall be issued to medical facilities on a continuing basis and shall be published and posted on a publicly accessible web site. The recommendations made to medical facilities under this section shall not be considered mandatory for licensure purposes unless

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

they are adopted by the department as rules pursuant to chapter 34.05 RCW; and

(f) Monitor implementation of reporting systems addressing adverse events or their equivalent in other states and make recommendations to the governor and the legislature as necessary for modifications to this chapter to keep the system as nearly consistent as possible with similar systems in other states.

(3) The independent entity shall report no later than January 1, 2008, and annually thereafter to the governor and the legislature on the activities under this chapter in the preceding year. The report shall include:

(a) The number of adverse events and incidents reported by medical facilities on a geographical basis and their outcomes;

(b) The information derived from the data collected, including any recognized trends concerning patient safety; and

(c) Recommendations for statutory or regulatory changes that may help improve patient safety in the state.

The annual report shall be made available for public inspection and shall be posted on the department's and the independent entity's web site.

(4) The independent entity shall conduct all activities under this section in a manner that preserves the confidentiality of facilities, documents, materials, or information made confidential by section 110 of this act.

(5) Medical facilities and health care workers may report incidents to the independent entity. The report shall be filed in a format specified by the independent entity, after consultation with the department and medical facilities, and shall identify the facility but shall not include any identifying information for any of the health care professionals, facility employees, or patients involved. This provision does not modify the duty of a hospital to make a report to the department or a disciplinary authority if a licensed practitioner has committed unprofessional conduct as defined in RCW 18.130.180. The protections of RCW 43.70.075 apply to reports of incidents that are submitted in good faith by employees of medical facilities.

Sec. 109. RCW 43.70.075 and 1995 c 265 s 19 are each amended to read as follows:

(1) The identity of a whistleblower who complains, in good faith, to the department of health about the improper quality of care by a health care provider, or in a health care facility, as defined in RCW 43.72.010, or who submits a notification or report of an adverse event or an incident, in good faith, to the department of health under section 106 of this act or to the independent entity under section 108 of this act, shall remain confidential. The provisions of RCW 4.24.500 through 4.24.520, providing certain protections to persons who communicate to government agencies, shall apply to complaints and notifications or reports of adverse events or incidents filed under this section. The identity of the whistleblower shall remain confidential unless the department determines that the complaint or notification or report of the adverse event or incident was not made in good faith. An employee who is a whistleblower, as defined in this section, and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action has the remedies provided under chapter 49.60 RCW.

(2)(a) "Improper quality of care" means any practice, procedure, action, or failure to act that violates any state law or rule of the applicable state health licensing authority under Title 18 or chapters 70.41, 70.96A, 70.127, 70.175, 71.05, 71.12, and 71.24 RCW, and enforced by the department of health. Each

health disciplinary authority as defined in RCW 18.130.040 may, with consultation and interdisciplinary coordination provided by the state department of health, adopt rules defining accepted standards of practice for their profession that shall further define improper quality of care. Improper quality of care shall not include good faith personnel actions related to employee performance or actions taken according to established terms and conditions of employment.

(b) "Reprisal or retaliatory action" means but is not limited to: Denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unwarranted and unsubstantiated report of misconduct pursuant to Title 18 RCW; letters of reprimand or unsatisfactory performance evaluations; demotion; reduction in pay; denial of promotion; suspension; dismissal; denial of employment; and a supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower.

(c) "Whistleblower" means a consumer, employee, or health care professional who in good faith reports alleged quality of care concerns to the department of health.

(3) Nothing in this section prohibits a health care facility from making any decision exercising its authority to terminate, suspend, or discipline an employee who engages in workplace reprisal or retaliatory action against a whistleblower.

(4) The department shall adopt rules to implement procedures for filing, investigation, and resolution of whistleblower complaints that are integrated with complaint procedures under Title 18 RCW for health professionals or health care facilities.

NEW SECTION. Sec. 110. (1) When a notification or report of an adverse event or incident under section 106 or 108 of this act is made by or through a coordinated quality improvement program under RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, information and documents, including complaints and incident reports, created specifically for and collected and maintained by a quality improvement committee for the purpose of preparing a notification or report of an adverse event or incident, and the notification or report itself, shall be subject to the confidentiality protections of those laws and RCW 42.17.310(1)(hh) and 42.56.360(1)(c).

(2) When a notification or report of an adverse event or incident made by a health care worker under section 106 or 108 of this act uses information and documents, including complaints and incident reports, created specifically for and collected and maintained by a quality improvement committee under RCW 43.70.510 or 70.41.200 or a peer review committee under RCW 4.24.250, the notification or report itself and the information or documents used for the purpose of preparing the notification or report, shall be subject to the confidentiality protections of those laws and RCW 42.17.310(1)(hh) and 42.56.360(1)(c).

Sec. 111. RCW 42.17.310 and 2005 c 424 s 16, 2005 c 349 s 1, 2005 c 312 s 6, 2005 c 284 s 1, 2005 c 172 s 13, and 2005 c 33 s 4 are each reenacted and amended to read as follows:

(1) The following are exempt from public inspection and copying:

(a) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients.

(b) Personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy.

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the public disclosure commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the public disclosure commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath.

(f) Test questions, scoring keys, and other examination data used to administer a license, employment, or academic examination.

(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition or sale of property, until the project or prospective sale is abandoned or until such time as all of the property has been acquired or the property to which the sale appraisal relates is sold, but in no event shall disclosure be denied for more than three years after the appraisal.

(h) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.

(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.

(k) Records, maps, or other information identifying the location of archaeological sites in order to avoid the looting or depredation of such sites.

(l) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.

(m) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (i) a ferry system construction or repair contract as required by RCW 47.60.680 through

47.60.750 or (ii) highway construction or improvement as required by RCW 47.28.070.

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW.

(q) Records filed with the utilities and transportation commission or attorney general under RCW 80.04.095 that a court has determined are confidential under RCW 80.04.095.

(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency.

(s) Membership lists or lists of members or owners of interests of units in timeshare projects, subdivisions, camping resorts, condominiums, land developments, or common-interest communities affiliated with such projects, regulated by the department of licensing, in the files or possession of the department.

(t) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to an applicant.

(u) The residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of dependents of employees or volunteers of a public agency, which are held by any public agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency. For purposes of this subsection, "employees" includes independent provider home care workers as defined in RCW 74.39A.240.

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, for the establishment, enforcement, or modification of a support order.

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.040 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

(x) Information obtained by the board of pharmacy as provided in RCW 69.45.090.

(y) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420.

(z) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW.

(aa) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information.

(bb) Financial and valuable trade information under RCW 51.36.120.

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW.

(hh) Information and documents created specifically for, and collected and maintained by, a quality improvement committee pursuant to RCW 43.70.510 or 70.41.200, by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, and notifications or reports of adverse events or incidents made under section 106 or 108 of this act, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under RCW 43.07.360.

(jj) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) The personally identifying information of current or former participants or applicants in a paratransit or other transit service operated for the benefit of persons with disabilities or elderly persons.

(nn) The personally identifying information of persons who acquire and use transit passes and other fare payment media including, but not limited to, stored value smart cards and magnetic strip cards, except that an agency may disclose this information to a person, employer, educational institution, or other entity that is responsible, in whole or in part, for payment of the cost of acquiring or using a transit pass or other fare payment media, or to the news media when reporting on public transportation or public safety. This information may also be disclosed at the agency's discretion to governmental agencies or groups concerned with public transportation or public safety.

(oo) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(pp) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(qq) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(rr) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b).

(ss) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law.

(tt) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), liquor license, gambling license, or lottery retail license.

(uu) Records maintained by the employment security department and subject to chapter 50.13 RCW if provided to another individual or organization for operational, research, or evaluation purposes.

(vv) Individually identifiable information received by the work force training and education coordinating board for research or evaluation purposes.

(ww) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(i) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(ii) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism.

(xx) Commercial fishing catch data from logbooks required to be provided to the department of fish and wildlife under RCW 77.12.047, when the data identifies specific catch location, timing, or methodology and the release of which would result in unfair competitive disadvantage to the commercial fisher providing the catch data. However, this information may be released to government agencies concerned with the management of fish and wildlife resources.

(yy) Sensitive wildlife data obtained by the department of fish and wildlife. However, sensitive wildlife data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive wildlife data includes:

(i) The nesting sites or specific locations of endangered species designated under RCW 77.12.020, or threatened or sensitive species classified by rule of the department of fish and wildlife;

(ii) Radio frequencies used in, or locational data generated by, telemetry studies; or

(iii) Other location data that could compromise the viability of a specific fish or wildlife population, and where at least one of the following criteria are met:

(A) The species has a known commercial or black market value;

(B) There is a history of malicious take of that species; or

(C) There is a known demand to visit, take, or disturb, and the species behavior or ecology renders it especially vulnerable or the species has an extremely limited distribution and concentration.

(zz) The personally identifying information of persons who acquire recreational licenses under RCW 77.32.010 or commercial licenses under chapter 77.65 or 77.70 RCW, except

name, address of contact used by the department, and type of license, endorsement, or tag. However, the department of fish and wildlife may disclose personally identifying information to:

(i) Government agencies concerned with the management of fish and wildlife resources;

(ii) The department of social and health services, child support division, and to the department of licensing in order to implement RCW 77.32.014 and 46.20.291; and

(iii) Law enforcement agencies for the purpose of firearm possession enforcement under RCW 9.41.040.

(aaa)(i) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have not been commingled with other recorded documents. These records will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding that veteran's general power of attorney, or to anyone else designated in writing by that veteran to receive the records.

(ii) Discharge papers of a veteran of the armed forces of the United States filed at the office of the county auditor before July 1, 2002, that have been commingled with other records, if the veteran has recorded a "request for exemption from public disclosure of discharge papers" with the county auditor. If such a request has been recorded, these records may be released only to the veteran filing the papers, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iii) Discharge papers of a veteran filed at the office of the county auditor after June 30, 2002, are not public records, but will be available only to the veteran, the veteran's next of kin, a deceased veteran's properly appointed personal representative or executor, a person holding the veteran's general power of attorney, or anyone else designated in writing by the veteran to receive the records.

(iv) For the purposes of this subsection (1)(aaa), next of kin of deceased veterans have the same rights to full access to the record. Next of kin are the veteran's widow or widower who has not remarried, son, daughter, father, mother, brother, and sister.

(bbb) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility or any individual's safety.

(ccc) Information compiled by school districts or schools in the development of their comprehensive safe school plans pursuant to RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school.

(ddd) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities.

(eee) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW.

(fff) Proprietary data, trade secrets, or other information that relates to: (i) A vendor's unique methods of conducting business; (ii) data unique to the product or services of the vendor; or (iii) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011.

(ggg) The personally identifying information of persons who acquire and use transponders or other technology to facilitate payment of tolls. This information may be disclosed in aggregate form as long as the data does not contain any personally identifying information. For these purposes aggregate data may include the census tract of the account holder as long as any individual personally identifying information is not released. Personally identifying information may be released to law enforcement agencies only for toll enforcement purposes. Personally identifying information may be released to law enforcement agencies for other purposes only if the request is accompanied by a court order.

(hhh) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information.

(iii) Records of mediation communications that are privileged under chapter 7.07 RCW.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

Sec. 112. RCW 42.56.360 and 2005 c 274 s 416 are each amended to read as follows:

(1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;

(b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, and notifications or reports of adverse events or incidents made under section 106 or 108 of this act, regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Except for published statistical compilations and reports relating to the infant mortality review studies that do not identify individual cases and sources of information, any records or documents obtained, prepared, or maintained by the local health department for the purposes of an infant mortality review conducted by the department of health under RCW 70.05.170; and

(g) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1).

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients.

Coordinated Quality Improvement Programs

Sec. 113. RCW 43.70.510 and 2004 c 145 s 2 are each amended to read as follows:

(1)(a) Health care institutions and medical facilities, other than hospitals, that are licensed by the department, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers approved pursuant to chapter 48.43 RCW, and any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200.

(b) All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the institution, facility, professional societies or organizations, health care service

contractors, health maintenance organizations, health carriers, or any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction and regulation of any state agency or any subdivision thereof, unless an alternative quality improvement program substantially equivalent to RCW 70.41.200(1)(a) is developed. All such programs, whether complying with the requirement set forth in RCW 70.41.200(1)(a) or in the form of an alternative program, must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section shall apply. In reviewing plans submitted by licensed entities that are associated with physicians' offices, the department shall ensure that the exemption under RCW 42.17.310(1)(hh) and the discovery limitations of this section are applied only to information and documents related specifically to quality improvement activities undertaken by the licensed entity.

(2) Health care provider groups of five or more providers may maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice as set forth in RCW 70.41.200. For purposes of this section, a health care provider group may be a consortium of providers consisting of five or more providers in total. All such programs shall comply with the requirements of RCW 70.41.200(1) (a), (c), (d), (e), (f), (g), and (h) as modified to reflect the structural organization of the health care provider group. All such programs must be approved by the department before the discovery limitations provided in subsections (3) and (4) of this section and the exemption under RCW 42.17.310(1)(hh) and subsection (5) of this section shall apply.

(3) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (6) of this section is not subject to an action for civil damages or other relief as a result of the activity or its consequences. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(4) Information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any

civil action, the testimony of any person concerning the facts that form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action challenging the termination of a contract by a state agency with any entity maintaining a coordinated quality improvement program under this section if the termination was on the basis of quality of care concerns, introduction into evidence of information created, collected, or maintained by the quality improvement committees of the subject entity, which may be under terms of a protective order as specified by the court; (e) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (f) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department of health to be made regarding the care and treatment received.

(5) Information and documents created specifically for, and collected and maintained by a quality improvement committee are exempt from disclosure under chapter 42.17 RCW.

(6) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or with RCW 70.41.200 or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (4) of this section and RCW 4.24.250.

(7) The department of health shall adopt rules as are necessary to implement this section.

Prescription Legibility

NEW SECTION. **Sec. 114.** The legislature finds that prescription drug errors occur because the pharmacist or nurse cannot read the prescription from the physician or other provider with prescriptive authority. The legislature further finds that legible prescriptions can prevent these errors.

Sec. 115. RCW 69.41.010 and 2003 c 257 s 2 and 2003 c 140 s 11 are each reenacted and amended to read as follows:

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner; or

(b) The patient or research subject at the direction of the practitioner.

(2) "Community-based care settings" include: Community residential programs for the developmentally disabled, certified by the department of social and health services under chapter 71A.12 RCW; adult family homes licensed under chapter 70.128 RCW; and boarding homes licensed under chapter 18.20 RCW. Community-based care settings do not include acute care or skilled nursing facilities.

(3) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.

(4) "Department" means the department of health.

(5) "Dispense" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(6) "Dispenser" means a practitioner who dispenses.

(7) "Distribute" means to deliver other than by administering or dispensing a legend drug.

(8) "Distributor" means a person who distributes.

(9) "Drug" means:

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(10) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a legend drug between an authorized practitioner and a pharmacy or the transfer of prescription information for a legend drug from one pharmacy to another pharmacy.

(11) "In-home care settings" include an individual's place of temporary and permanent residence, but does not include acute care or skilled nursing facilities, and does not include community-based care settings.

(12) "Legend drugs" means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

(13) "Legible prescription" means a prescription or medication order issued by a practitioner that is capable of being

read and understood by the pharmacist filling the prescription or the nurse or other practitioner implementing the medication order. A prescription must be hand printed, typewritten, or electronically generated.

(14) "Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based care setting or in-home care setting to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, and such other means of medication assistance as defined by rule adopted by the department. A nonpractitioner may help in the preparation of legend drugs or controlled substances for self-administration where a practitioner has determined and communicated orally or by written direction that such medication preparation assistance is necessary and appropriate. Medication assistance shall not include assistance with intravenous medications or injectable medications, except prefilled insulin syringes.

(15) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(16) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, an optometrist under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, an osteopathic physician assistant under chapter 18.57A RCW, a physician assistant under chapter 18.71A RCW, a naturopath licensed under chapter 18.36A RCW, a pharmacist under chapter 18.64 RCW, or, when acting under the required supervision of a dentist licensed under chapter 18.32 RCW, a dental hygienist licensed under chapter 18.29 RCW;

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a legend drug in the course of professional practice or research in this state; and

(c) A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery in any state, or province of Canada, which shares a common border with the state of Washington.

(17) "Secretary" means the secretary of health or the secretary's designee.

PART II - INSURANCE INDUSTRY REFORM

Medical Malpractice Closed Claim Reporting

NEW SECTION. Sec. 201. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Claim" means a demand for monetary damages for injury or death caused by medical malpractice, and a voluntary indemnity payment for injury or death caused by medical malpractice made in the absence of a demand for monetary damages.

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

(2) "Claimant" means a person, including a decedent's estate, who is seeking or has sought monetary damages for injury or death caused by medical malpractice.

(3) "Closed claim" means a claim that has been settled or otherwise disposed of by the insuring entity, self-insurer, facility, or provider. A claim may be closed with or without an indemnity payment to a claimant.

(4) "Commissioner" means the insurance commissioner.

(5) "Economic damages" has the same meaning as in RCW 4.56.250(1)(a).

(6) "Health care facility" or "facility" means a clinic, diagnostic center, hospital, laboratory, mental health center, nursing home, office, surgical facility, treatment facility, or similar place where a health care provider provides health care to patients, and includes entities described in RCW 7.70.020(3).

(7) "Health care provider" or "provider" has the same meaning as in RCW 7.70.020 (1) and (2).

(8) "Insuring entity" means:

(a) An insurer;

(b) A joint underwriting association;

(c) A risk retention group; or

(d) An unauthorized insurer that provides surplus lines coverage.

(9) "Medical malpractice" means an actual or alleged negligent act, error, or omission in providing or failing to provide health care services that is actionable under chapter 7.70 RCW.

(10) "Noneconomic damages" has the same meaning as in RCW 4.56.250(1)(b).

(11) "Self-insurer" means any health care provider, facility, or other individual or entity that assumes operational or financial risk for claims of medical malpractice.

NEW SECTION. Sec. 202. (1) For claims closed on or after January 1, 2008:

(a) Every insuring entity or self-insurer that provides medical malpractice insurance to any facility or provider in Washington state must report each medical malpractice closed claim to the commissioner.

(b) If a claim is not covered by an insuring entity or self-insurer, the facility or provider named in the claim must report it to the commissioner after a final claim disposition has occurred due to a court proceeding or a settlement by the parties. Instances in which a claim may not be covered by an insuring entity or self-insurer include, but are not limited to, situations in which the:

(i) Facility or provider did not buy insurance or maintained a self-insured retention that was larger than the final judgment or settlement;

(ii) Claim was denied by an insuring entity or self-insurer because it did not fall within the scope of the insurance coverage agreement; or

(iii) Annual aggregate coverage limits had been exhausted by other claim payments.

(2) Beginning in 2009, reports required under subsection (1) of this section must be filed by March 1st, and include data for all claims closed in the preceding calendar year and any adjustments to data reported in prior years. The commissioner may adopt rules that require insuring entities, self-insurers, facilities, or providers to file closed claim data electronically.

(3) The commissioner may impose a fine of up to two hundred fifty dollars per day against any insuring entity that violates the requirements of this section.

(4) The department of health, department of licensing or department of social and health services may require a provider or facility to take corrective action to assure compliance with the requirements of this section.

NEW SECTION. Sec. 203. Reports required under section 202 of this act must contain the following information in a form and coding protocol prescribed by the commissioner that, to the extent possible and still fulfill the purposes of this chapter, are consistent with the format for data reported to the national practitioner data bank:

(1) Claim and incident identifiers, including:

(a) A claim identifier assigned to the claim by the insuring entity, self-insurer, facility, or provider; and

(b) An incident identifier if companion claims have been made by a claimant. For the purposes of this section, "companion claims" are separate claims involving the same incident of medical malpractice made against other providers or facilities;

(2) The medical specialty of the provider who was primarily responsible for the incident of medical malpractice that led to the claim;

(3) The type of health care facility where the medical malpractice incident occurred;

(4) The primary location within a facility where the medical malpractice incident occurred;

(5) The geographic location, by city and county, where the medical malpractice incident occurred;

(6) The injured person's sex and age on the incident date;

(7) The severity of malpractice injury using the national practitioner data bank severity scale;

(8) The dates of:

(a) The incident that was the proximate cause of the claim;

(b) Notice to the insuring entity, self-insurer, facility, or provider;

(c) Suit, if filed;

(d) Final indemnity payment, if any; and

(e) Final action by the insuring entity, self-insurer, facility, or provider to close the claim;

(9) Settlement information that identifies the timing and final method of claim disposition, including:

(a) Claims settled by the parties;

(b) Claims disposed of by a court, including the date disposed; or

(c) Claims disposed of by alternative dispute resolution, such as arbitration, mediation, private trial, and other common dispute resolution methods; and

(d) Whether the settlement occurred before or after trial, if a trial occurred;

(10) Specific information about the indemnity payments and defense expenses, as follows:

(a) For claims disposed of by a court that result in a verdict or judgment that itemizes damages:

(i) The total verdict or judgment;

(ii) If there is more than one defendant, the total indemnity paid by or on behalf of this facility or provider;

(iii) Economic damages;

(iv) Noneconomic damages; and

(v) Allocated loss adjustment expense, including but not limited to court costs, attorneys' fees, and costs of expert witnesses; and

(b) For claims that do not result in a verdict or judgment that itemizes damages:

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

- (i) The total amount of the settlement;
- (ii) If there is more than one defendant, the total indemnity paid by or on behalf of this facility or provider;
- (iii) Paid and estimated economic damages; and
- (iv) Allocated loss adjustment expense, including but not limited to court costs, attorneys' fees, and costs of expert witnesses;

(11) The reason for the medical malpractice claim. The reporting entity must use the same allegation group and act or omission codes used for mandatory reporting to the national practitioner data bank; and

(12) Any other claim-related data the commissioner determines to be necessary to monitor the medical malpractice marketplace, if such data are reported:

(a) To the national practitioner data bank; or

(b) Voluntarily by members of the physician insurers association of America as part of the association's data-sharing project.

NEW SECTION. Sec. 204. The commissioner must prepare aggregate statistical summaries of closed claims based on data submitted under section 202 of this act.

(1) At a minimum, the commissioner must summarize data by calendar year and calendar/incident year. The commissioner may also decide to display data in other ways if the commissioner:

(a) Protects information as required under section 206(2) of this act; and

(b) Exempts from disclosure data described in RCW 42.56.400(11).

(2) The summaries must be available by April 30th of each year, unless the commissioner notifies legislative committees by March 15th that data are not available and informs the committees when the summaries will be completed.

(3) Information included in an individual closed claim report submitted by an insuring entity, self-insurer, provider, or facility under this chapter is confidential and exempt from public disclosure, and the commissioner must not make these data available to the public.

NEW SECTION. Sec. 205. Beginning in 2010, the commissioner must prepare an annual report that summarizes and analyzes the closed claim reports for medical malpractice filed under sections 202 and 209 of this act and the annual financial reports filed by authorized insurers writing medical malpractice insurance in this state. The commissioner must complete the report by June 30th, unless the commissioner notifies legislative committees by June 1st that data are not available and informs the committees when the summaries will be completed.

(1) The report must include:

(a) An analysis of reported closed claims from prior years for which data are collected. The analysis must show:

(i) Trends in the frequency and severity of claim payments;

(ii) A comparison of economic and noneconomic damages;

(iii) A distribution of allocated loss adjustment expenses and other legal expenses;

(iv) The types of medical malpractice for which claims have been paid; and

(v) Any other information the commissioner finds relevant to trends in medical malpractice closed claims if the commissioner:

(A) Protects information as required under section 206(2) of this act; and

(B) Exempts from disclosure data described in RCW 42.56.400(11);

(b) An analysis of the medical malpractice insurance market in Washington state, including:

(i) An analysis of the financial reports of the authorized insurers with a combined market share of at least ninety percent of direct written medical malpractice premium in Washington state for the prior calendar year;

(ii) A loss ratio analysis of medical malpractice insurance written in Washington state; and

(iii) A profitability analysis of the authorized insurers with a combined market share of at least ninety percent of direct written medical malpractice premium in Washington state for the prior calendar year;

(c) A comparison of loss ratios and the profitability of medical malpractice insurance in Washington state to other states based on financial reports filed with the national association of insurance commissioners and any other source of information the commissioner deems relevant; and

(d) A summary of the rate filings for medical malpractice that have been approved by the commissioner for the prior calendar year, including an analysis of the trend of direct incurred losses as compared to prior years.

(2) The commissioner must post reports required by this section on the internet no later than thirty days after they are due.

(3) The commissioner may adopt rules that require insuring entities and self-insurers required to report under section 202 of this act and subsection (1)(a) of this section to report data related to:

(a) The frequency and severity of closed claims for the reporting period; and

(b) Any other closed claim information that helps the commissioner monitor losses and claim development patterns in the Washington state medical malpractice insurance market.

NEW SECTION. Sec. 206. The commissioner must adopt all rules needed to implement this chapter. The rules must:

(1) Identify which insuring entity or self-insurer has the primary obligation to report a closed claim when more than one insuring entity or self-insurer is providing medical malpractice liability coverage to a single health care provider or a single health care facility that has been named in a claim;

(2) Protect information that, alone or in combination with other data, could result in the ability to identify a claimant, health care provider, health care facility, or self-insurer involved in a particular claim or collection of claims; and

(3) Specify standards and methods for the reporting by claimants, insuring entities, self-insurers, facilities, and providers.

NEW SECTION. Sec. 207. (1) If the national association of insurance commissioners adopts revised model statistical reporting standards for medical malpractice insurance, the commissioner must analyze the new reporting standards and report this information to the legislature, as follows:

(a) An analysis of any differences between the model reporting standards and:

(i) Sections 201 through 206 of this act; and

(ii) Any statistical plans that the commissioner has adopted under RCW 48.19.370; and

(b) Recommendations, if any, about legislative changes necessary to implement the model reporting standards.

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

(2) The commissioner must submit the report required under subsection (1) of this section to the following legislative committees by the first day of December in the year after the national association of insurance commissioners adopts new model medical malpractice reporting standards:

(a) The house of representatives committees on health care; financial institutions and insurance; and judiciary; and

(b) The senate committees on health and long-term care; financial institutions, housing and consumer protection; and judiciary.

NEW SECTION. Sec. 208. This chapter does not amend or modify the statistical reporting requirements that apply to insurers under RCW 48.19.370.

NEW SECTION. Sec. 209. A new section is added to chapter 7.70 RCW to read as follows:

(1) As used in this section:

(a) "Claim" has the same meaning as in section 201(1) of this act.

(b) "Claimant" has the same meaning as in section 201(2) of this act.

(c) "Commissioner" has the same meaning as in section 201(4) of this act.

(d) "Medical malpractice" has the same meaning as in section 201(9) of this act.

(2)(a) For claims settled or otherwise disposed of on or after January 1, 2008, the claimant or his or her attorney must report data to the commissioner if any action filed under this chapter results in a final:

(i) Judgment in any amount;

(ii) Settlement or payment in any amount; or

(iii) Disposition resulting in no indemnity payment.

(b) As used in this subsection, "data" means:

(i) The date of the incident of medical malpractice that was the principal cause of the action;

(ii) The principal county in which the incident of medical malpractice occurred;

(iii) The date of suit, if filed;

(iv) The injured person's sex and age on the incident date; and

(v) Specific information about the disposition, judgment, or settlement, including:

(A) The date and amount of any judgment or settlement;

(B) Court costs;

(C) Attorneys' fees; and

(D) Costs of expert witnesses.

Sec. 210. RCW 42.56.400 and 2005 c 274 s 420 are each amended to read as follows:

The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of all viators regulated by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(7) Examination reports and information obtained by the department of financial institutions from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(8) Information provided to the insurance commissioner under RCW 48.110.040(3);

(9) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged; ~~(and)~~

(10) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070; and

(11) Data filed under sections 202, 203, 205, and 209 of this act that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in section 201(2) of this act.

(b) "Health care facility" has the same meaning as in section 201(6) of this act.

(c) "Health care provider" has the same meaning as in section 201(7) of this act.

(d) "Insuring entity" has the same meaning as in section 201(8) of this act.

(e) "Self-insurer" has the same meaning as in section 201(11) of this act.

Underwriting Standards

NEW SECTION. Sec. 211. A new section is added to chapter 48.18 RCW to read as follows:

(1) For the purposes of this section:

(a) "Affiliate" has the same meaning as in RCW 48.31B.005(1).

(b) "Claim" means a demand for monetary damages by a claimant.

(c) "Claimant" means a person, including a decedent's estate, who is seeking or has sought monetary damages for injury or death caused by medical malpractice.

(d) "Tier" has the same meaning as in RCW 48.18.545(1)(h).

(e) "Underwrite" or "underwriting" means the process of selecting, rejecting, or pricing a risk, and includes each of these activities:

(i) Evaluation, selection, and classification of risk, including placing a risk with an affiliate insurer that has higher rates

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

and/or rating plan components that will result in higher premiums;

(ii) Application of classification plans, rates, rating rules, and rating tiers to an insured risk; and

(iii) Determining eligibility for:

- (A) Insurance coverage provisions;
- (B) Higher policy limits; or
- (C) Premium payment plans.

(2) During each underwriting process, an insurer may consider the following factors only in combination with other substantive underwriting factors:

(a) An insured has inquired about the nature or scope of coverage under a medical malpractice insurance policy;

(b) An insured has notified their insurer about an incident that may be covered under the terms of their medical malpractice insurance policy, and that incident does not result in a claim; or

(c) A claim made against an insured was closed by the insurer without payment. An insurer may consider the effect of multiple claims if they have a significant effect on the insured's risk profile.

(3) If any underwriting activity related to the insured's risk profile results in higher premiums as described under subsection (1)(e) (i) and (ii) of this section or reduced coverage as described under subsection (1)(e)(iii) of this section, the insurer must provide written notice to the insured, in clear and simple language, that describes the significant risk factors which led to the underwriting action. The commissioner must adopt rules that define the components of a risk profile that require notice under this subsection.

Sec. 212. RCW 48.18.290 and 1997 c 85 s 1 are each amended to read as follows:

(1) Cancellation by the insurer of any policy which by its terms is cancellable at the option of the insurer, or of any binder based on such policy which does not contain a clearly stated expiration date, may be effected as to any interest only upon compliance with the following:

(a) ~~(Written notice of such cancellation, accompanied by the actual reason therefor, must be actually delivered or mailed to the named insured not less than forty-five days prior to the effective date of the cancellation except for cancellation of insurance policies for nonpayment of premiums, which notice shall be not less than ten days prior to such date and except for cancellation of fire insurance policies under chapter 48.53 RCW, which notice shall not be less than five days prior to such date;)~~ For all insurance policies other than medical malpractice insurance policies or fire insurance policies canceled under RCW 48.53.040:

(i) The insurer must deliver or mail written notice of cancellation to the named insured at least forty-five days before the effective date of the cancellation; and

(ii) The cancellation notice must include the insurer's actual reason for canceling the policy.

(b) For medical malpractice insurance policies:

(i) The insurer must deliver or mail written notice of the cancellation to the named insured at least ninety days before the effective date of the cancellation; and

(ii) The cancellation notice must include the insurer's actual reason for canceling the policy and describe the significant risk factors that led to the insurer's underwriting action, as defined under section 211(1)(e) of this act.

(c) If an insurer cancels a policy described under (a) or (b) of this subsection for nonpayment of premium, the insurer must deliver or mail the cancellation notice to the named insured at least ten days before the effective date of the cancellation.

(d) If an insurer cancels a fire insurance policy under RCW 48.53.040, the insurer must deliver or mail the cancellation notice to the named insured at least five days before the effective date of the cancellation.

(e) Like notice must also be so delivered or mailed to each mortgagee, pledgee, or other person shown by the policy to have an interest in any loss which may occur thereunder. For purposes of this subsection (1)((b)) (e), "delivered" includes electronic transmittal, facsimile, or personal delivery.

(2) The mailing of any such notice shall be effected by depositing it in a sealed envelope, directed to the addressee at his or her last address as known to the insurer or as shown by the insurer's records, with proper prepaid postage affixed, in a letter depository of the United States post office. The insurer shall retain in its records any such item so mailed, together with its envelope, which was returned by the post office upon failure to find, or deliver the mailing to, the addressee.

(3) The affidavit of the individual making or supervising such a mailing, shall constitute prima facie evidence of such facts of the mailing as are therein affirmed.

(4) The portion of any premium paid to the insurer on account of the policy, unearned because of the cancellation and in amount as computed on the pro rata basis, must be actually paid to the insured or other person entitled thereto as shown by the policy or by any endorsement thereon, or be mailed to the insured or such person as soon as possible, and no later than forty-five days after the date of notice of cancellation to the insured for homeowners', dwelling fire, and private passenger auto. Any such payment may be made by cash, or by check, bank draft, or money order.

(5) This section shall not apply to contracts of life or disability insurance without provision for cancellation prior to the date to which premiums have been paid, or to contracts of insurance procured under the provisions of chapter 48.15 RCW.

Sec. 213. RCW 48.18.2901 and 2002 c 347 s 1 are each amended to read as follows:

(1) Each insurer ~~((shall be required to))~~ must renew any ~~((contract of))~~ insurance policy subject to RCW 48.18.290 unless one of the following situations exists:

(a) ~~((The insurer gives the named insured at least forty-five days' notice in writing as provided for in RCW 48.18.290, that it proposes to refuse to renew the insurance contract upon its expiration date; and sets forth in that writing the actual reason for refusing to renew))~~ (i) For all insurance policies subject to RCW 48.18.290(1)(a):

(A) The insurer must deliver or mail written notice of nonrenewal to the named insured at least forty-five days before the expiration date of the policy; and

(B) The notice must include the insurer's actual reason for refusing to renew the policy.

(ii) For medical malpractice insurance policies subject to RCW 48.18.290(1)(b):

(A) The insurer must deliver or mail written notice of the nonrenewal to the named insured at least ninety days before the expiration date of the policy; and

(B) The notice must include the insurer's actual reason for refusing to renew the policy and describe the significant risk

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

factors that led to the insurer's underwriting action, as defined under section 211(1)(e) of this act;

(b) At least twenty days prior to its expiration date, the insurer has communicated, either directly or through its agent, its willingness to renew in writing to the named insured and has included in that writing a statement of the amount of the premium or portion thereof required to be paid by the insured to renew the policy, and the insured fails to discharge when due his or her obligation in connection with the payment of such premium or portion thereof;

(c) The insured has procured equivalent coverage prior to the expiration of the policy period;

(d) The contract is evidenced by a written binder containing a clearly stated expiration date which has expired according to its terms; or

(e) The contract clearly states that it is not renewable, and is for a specific line, subclassification, or type of coverage that is not offered on a renewable basis. This subsection (1)(e) does not restrict the authority of the insurance commissioner under this code.

(2) Any insurer failing to include in the notice required by subsection (1)(b) of this section the amount of any increased premium resulting from a change of rates and an explanation of any change in the contract provisions shall renew the policy if so required by that subsection according to the rates and contract provisions applicable to the expiring policy. However, renewal based on the rates and contract provisions applicable to the expiring policy shall not prevent the insurer from making changes in the rates and/or contract provisions of the policy once during the term of its renewal after at least twenty days' advance notice of such change has been given to the named insured.

(3) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal, or with respect to cancellation of fire policies under chapter 48.53 RCW.

(4) "Renewal" or "to renew" means the issuance and delivery by an insurer of a contract of insurance replacing at the end of the contract period a contract of insurance previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a contract beyond its policy period or term. However, (a) any contract of insurance with a policy period or term of six months or less whether or not made continuous for successive terms upon the payment of additional premiums shall for the purpose of RCW 48.18.290 and 48.18.293 through 48.18.295 be considered as if written for a policy period or term of six months; and (b) any policy written for a term longer than one year or any policy with no fixed expiration date, shall, for the purpose of RCW 48.18.290 and 48.18.293 through 48.18.295, be considered as if written for successive policy periods or terms of one year.

(5) A midterm blanket reduction in rate, approved by the commissioner, for medical malpractice insurance shall not be considered a renewal for purposes of this section.

Prior Approval of Medical Malpractice Insurance Rates

Sec. 214. RCW 48.18.100 and 2005 c 223 s 8 are each amended to read as follows:

(1) No insurance policy form or application form where written application is required and is to be attached to the

policy, or printed life or disability rider or endorsement form may be issued, delivered, or used unless it has been filed with and approved by the commissioner. This section does not apply to:

(a) Surety bond forms;

(b) Forms filed under RCW 48.18.103;

(c) Forms exempted from filing requirements by the commissioner under RCW 48.18.103;

(d) Manuscript policies, riders, or endorsements of unique character designed for and used with relation to insurance upon a particular subject; or

(e) Contracts of insurance procured under the provisions of chapter 48.15 RCW.

(2) Every such filing containing a certification, in a form approved by the commissioner, by either the chief executive officer of the insurer or by an actuary who is a member of the American academy of actuaries, attesting that the filing complies with Title 48 RCW and Title 284 of the Washington Administrative Code, may be used by the insurer immediately after filing with the commissioner. The commissioner may order an insurer to cease using a certified form upon the grounds set forth in RCW 48.18.110. This subsection does not apply to certain types of policy forms designated by the commissioner by rule.

(3) Except as provided in RCW 48.18.103, every filing that does not contain a certification pursuant to subsection (2) of this section must be made not less than thirty days in advance of issuance, delivery, or use. At the expiration of the thirty days, the filed form shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the commissioner. The commissioner may extend by not more than an additional fifteen days the period within which he or she may affirmatively approve or disapprove any form, by giving notice of the extension before expiration of the initial thirty-day period. At the expiration of the period that has been extended, and in the absence of prior affirmative approval or disapproval, the form shall be deemed approved. The commissioner may withdraw any approval at any time for cause. By approval of any form for immediate use, the commissioner may waive any unexpired portion of the initial thirty-day waiting period.

(4) The commissioner's order disapproving any form or withdrawing a previous approval must state the grounds for disapproval.

(5) No form may knowingly be issued or delivered as to which the commissioner's approval does not then exist.

(6) The commissioner may, by rule, exempt from the requirements of this section any class or type of insurance policy forms if filing and approval is not desirable or necessary for the protection of the public.

(7) Every member or subscriber to a rating organization must adhere to the form filings made on its behalf by the organization. Deviations from the organization are permitted only when filed with the commissioner in accordance with this chapter.

(8) Medical malpractice insurance form filings are subject to the provisions of this section.

Sec. 215. RCW 48.18.103 and 2005 c 223 s 9 are each amended to read as follows:

(1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued more expeditiously and provide a more competitive market for forms.

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

(2) Commercial property casualty policies may be issued prior to filing the forms.

(3) All commercial property casualty forms must be filed with the commissioner within thirty days after an insurer issues any policy using them. This subsection does not apply to:

(a) Types or classes of forms that the commissioner exempts from filing by rule; and

(b) Manuscript policies, riders, or endorsements of unique character designed for and used with relation to insurance upon a particular subject.

(4) If, within thirty days after a commercial property casualty form has been filed, the commissioner finds that the form does not meet the requirements of this chapter, the commissioner shall disapprove the form and give notice to the insurer or rating organization that made the filing, specifying how the form fails to meet the requirements and stating when, within a reasonable period thereafter, the form shall be deemed no longer effective. The commissioner may extend the time for review an additional fifteen days by giving notice to the insurer prior to the expiration of the original thirty-day period.

(5) Upon a final determination of a disapproval of a policy form under subsection (4) of this section, the insurer must amend any previously issued disapproved form by endorsement to comply with the commissioner's disapproval.

(6) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070, but does not mean medical malpractice insurance.

(7) Except as provided in subsection (5) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

(8) Every member or subscriber to a rating organization must adhere to the form filings made on its behalf by the organization. An insurer may deviate from forms filed on its behalf by an organization only if the insurer files the forms with the commissioner in accordance with this chapter.

(9) In the event a hearing is held on the actions of the commissioner under subsection (4) of this section, the burden of proof shall be on the commissioner.

Sec. 216. RCW 48.19.043 and 2003 c 248 s 7 are each amended to read as follows:

(1) It is the intent of the legislature to assist the purchasers of commercial property casualty insurance by allowing policies to be issued more expeditiously and provide a more competitive market for rates.

(2) Notwithstanding the provisions of RCW 48.19.040(1), commercial property casualty policies may be issued prior to filing the rates. All commercial property casualty rates shall be filed with the commissioner within thirty days after an insurer issues any policy using them.

(3) If, within thirty days after a commercial property casualty rate has been filed, the commissioner finds that the rate does not meet the requirements of this chapter, the commissioner shall disapprove the filing and give notice to the insurer or rating organization that made the filing, specifying how the filing fails to meet the requirements and stating when, within a reasonable period thereafter, the filing shall be deemed no longer effective. The commissioner may extend the time for

review another fifteen days by giving notice to the insurer prior to the expiration of the original thirty-day period.

(4) Upon a final determination of a disapproval of a rate filing under subsection (3) of this section, the insurer shall issue an endorsement changing the rate to comply with the commissioner's disapproval from the date the rate is no longer effective.

(5) For purposes of this section, "commercial property casualty" means insurance pertaining to a business, profession, occupation, nonprofit organization, or public entity for the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, or 48.11.070, but does not mean medical malpractice insurance.

(6) Except as provided in subsection (4) of this section, the disapproval shall not affect any contract made or issued prior to the expiration of the period set forth in the notice of disapproval.

(7) In the event a hearing is held on the actions of the commissioner under subsection (3) of this section, the burden of proof is on the commissioner.

Sec. 217. RCW 48.19.060 and 1997 c 428 s 4 are each amended to read as follows:

(1) The commissioner shall review a filing as soon as reasonably possible after made, to determine whether it meets the requirements of this chapter.

(2) Except as provided in RCW 48.19.070 and 48.19.043:

(a) No such filing shall become effective within thirty days after the date of filing with the commissioner, which period may be extended by the commissioner for an additional period not to exceed fifteen days if he or she gives notice within such waiting period to the insurer or rating organization which made the filing that he or she needs such additional time for the consideration of the filing. The commissioner may, upon application and for cause shown, waive such waiting period or part thereof as to a filing that he or she has not disapproved.

(b) A filing shall be deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof.

(3) Medical malpractice insurance rate filings are subject to the provisions of this section.

PART III - HEALTH CARE LIABILITY REFORM

Statutes of Limitations and Repose

NEW SECTION. Sec. 301. The purpose of this section and section 302 of this act is to respond to the court's decision in *DeYoung v. Providence Medical Center*, 136 Wn.2d 136 (1998), by expressly stating the legislature's rationale for the eight-year statute of repose in RCW 4.16.350.

The legislature recognizes that the eight-year statute of repose alone may not solve the crisis in the medical insurance industry. However, to the extent that the eight-year statute of repose has an effect on medical malpractice insurance, that effect will tend to reduce rather than increase the cost of malpractice insurance.

Whether or not the statute of repose has the actual effect of reducing insurance costs, the legislature finds it will provide protection against claims, however few, that are stale, based on untrustworthy evidence, or that place undue burdens on defendants.

In accordance with the court's opinion in *DeYoung*, the legislature further finds that compelling even one defendant to answer a stale claim is a substantial wrong, and setting an outer limit to the operation of the discovery rule is an appropriate aim.

The legislature further finds that an eight-year statute of repose is a reasonable time period in light of the need to balance the interests of injured plaintiffs and the health care industry.

The legislature intends to reenact RCW 4.16.350 with respect to the eight-year statute of repose and specifically set forth for the court the legislature's legitimate rationale for adopting the eight-year statute of repose. The legislature further intends that the eight-year statute of repose reenacted by section 302 of this act be applied to actions commenced on or after the effective date of this section.

Sec. 302. RCW 4.16.350 and 1998 c 147 s 1 are each reenacted to read as follows:

Any civil action for damages for injury occurring as a result of health care which is provided after June 25, 1976 against:

(1) A person licensed by this state to provide health care or related services, including, but not limited to, a physician, osteopathic physician, dentist, nurse, optometrist, podiatric physician and surgeon, chiropractor, physical therapist, psychologist, pharmacist, optician, physician's assistant, osteopathic physician's assistant, nurse practitioner, or physician's trained mobile intensive care paramedic, including, in the event such person is deceased, his estate or personal representative;

(2) An employee or agent of a person described in subsection (1) of this section, acting in the course and scope of his employment, including, in the event such employee or agent is deceased, his estate or personal representative; or

(3) An entity, whether or not incorporated, facility, or institution employing one or more persons described in subsection (1) of this section, including, but not limited to, a hospital, clinic, health maintenance organization, or nursing home; or an officer, director, employee, or agent thereof acting in the course and scope of his employment, including, in the event such officer, director, employee, or agent is deceased, his estate or personal representative;

based upon alleged professional negligence shall be commenced within three years of the act or omission alleged to have caused the injury or condition, or one year of the time the patient or his representative discovered or reasonably should have discovered that the injury or condition was caused by said act or omission, whichever period expires later, except that in no event shall an action be commenced more than eight years after said act or omission: PROVIDED, That the time for commencement of an action is tolled upon proof of fraud, intentional concealment, or the presence of a foreign body not intended to have a therapeutic or diagnostic purpose or effect, until the date the patient or the patient's representative has actual knowledge of the act of fraud or concealment, or of the presence of the foreign body; the patient or the patient's representative has one year from the date of the actual knowledge in which to commence a civil action for damages.

For purposes of this section, notwithstanding RCW 4.16.190, the knowledge of a custodial parent or guardian shall be imputed to a person under the age of eighteen years, and such imputed knowledge shall operate to bar the claim of such minor to the same extent that the claim of an adult would be barred

under this section. Any action not commenced in accordance with this section shall be barred.

For purposes of this section, with respect to care provided after June 25, 1976, and before August 1, 1986, the knowledge of a custodial parent or guardian shall be imputed as of April 29, 1987, to persons under the age of eighteen years.

This section does not apply to a civil action based on intentional conduct brought against those individuals or entities specified in this section by a person for recovery of damages for injury occurring as a result of childhood sexual abuse as defined in RCW 4.16.340(5).

Sec. 303. RCW 4.16.190 and 1993 c 232 s 1 are each amended to read as follows:

(1) Unless otherwise provided in this section, if a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, or against a sheriff or other officer, for an escape, be at the time the cause of action accrued either under the age of eighteen years, or incompetent or disabled to such a degree that he or she cannot understand the nature of the proceedings, such incompetency or disability as determined according to chapter 11.88 RCW, or imprisoned on a criminal charge prior to sentencing, the time of such disability shall not be a part of the time limited for the commencement of action.

(2) Subsection (1) of this section with respect to a person under the age of eighteen years does not apply to the time limited for the commencement of an action under RCW 4.16.350.

Certificate of Merit

NEW SECTION. **Sec. 304.** A new section is added to chapter 7.70 RCW to read as follows:

(1) In an action against an individual health care provider under this chapter for personal injury or wrongful death in which the injury is alleged to have been caused by an act or omission that violates the accepted standard of care, the plaintiff must file a certificate of merit at the time of commencing the action. If the action is commenced within forty-five days prior to the expiration of the applicable statute of limitations, the plaintiff must file the certificate of merit no later than forty-five days after commencing the action.

(2) If there is more than one defendant in the action, the person commencing the action must file a certificate of merit for each defendant.

(3) The certificate of merit must contain a statement that the person executing the certificate of merit believes, based on the information known at the time of executing the certificate of merit, that there is a reasonable probability that the defendant's conduct did not follow the accepted standard of care required to be exercised by the defendant.

(4) Upon motion of the plaintiff, the court may grant an additional period of time to file the certificate of merit, not to exceed ninety days, if the court finds there is good cause for the extension.

(5)(a) Failure to file a certificate of merit that complies with the requirements of this section is grounds for dismissal of the case.

(b) If a case is dismissed for failure to file a certificate of merit that complies with the requirements of this section, the filing of the claim against the health care provider shall not be used against the health care provider in professional liability insurance rate setting, personal credit history, or professional licensing and credentialing.

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

Voluntary Arbitration

NEW SECTION. Sec. 305. This chapter applies to any cause of action for damages for personal injury or wrongful death based on alleged professional negligence in the provision of health care where all parties to the action have agreed to submit the dispute to arbitration under this chapter in accordance with the requirements of section 306 of this act.

NEW SECTION. Sec. 306. (1) Parties in an action covered under section 305 of this act may elect to submit the dispute to arbitration under this chapter in accordance with the requirements in this section.

(a) A claimant may elect to submit the dispute to arbitration under this chapter by including such election in the complaint filed at the commencement of the action. A defendant may elect to submit the dispute to arbitration under this chapter by including such election in the defendant's answer to the complaint. The dispute will be submitted to arbitration under this chapter only if all parties to the action elect to submit the dispute to arbitration.

(b) If the parties do not initially elect to submit the dispute to arbitration in accordance with (a) of this subsection, the parties may make such an election at any time during the pendency of the action by filing a stipulation with the court in which all parties to the action agree to submit the dispute to arbitration under this chapter.

(2) A party that does not initially elect to submit a dispute to arbitration under this chapter must file a declaration with the court that meets the following requirements:

(a) In the case of a claimant, the declaration must be filed at the time of commencing the action and must state that the attorney representing the claimant presented the claimant with a copy of the provisions of this chapter before commencing the action and that the claimant elected not to submit the dispute to arbitration under this chapter; and

(b) In the case of a defendant, the declaration must be filed at the time of filing the answer and must state that the attorney representing the defendant presented the defendant with a copy of the provisions of this chapter before filing the defendant's answer and that the defendant elected not to submit the dispute to arbitration under this chapter.

NEW SECTION. Sec. 307. (1) An arbitrator shall be selected by agreement of the parties no later than forty-five days after: (a) The date all defendants elected arbitration in the answer where the parties elected arbitration in the initial complaint and answer; or (b) the date of the stipulation where the parties agreed to enter into arbitration after the commencement of the action through a stipulation filed with the court. The parties may agree to select more than one arbitrator to conduct the arbitration.

(2) If the parties are unable to agree to an arbitrator by the time specified in subsection (1) of this section, each side may submit the names of three arbitrators to the court, and the court shall select an arbitrator from among the submitted names within fifteen days of being notified that the parties are unable to agree to an arbitrator. If none of the parties submit any names of potential arbitrators, the court shall select an arbitrator.

NEW SECTION. Sec. 308. The arbitrator may conduct the arbitration in such manner as the arbitrator considers appropriate so as to aid in the fair and expeditious disposition of the proceeding subject to the requirements of this section and section 309 of this act.

(1)(a) Except as provided in (b) of this subsection, each party is entitled to two experts on the issue of liability, two experts on the issue of damages, and one rebuttal expert.

(b) Where there are multiple parties on one side, the arbitrator shall determine the number of experts that are allowed based on the minimum number of experts necessary to ensure a fair and economic resolution of the action.

(2)(a) Unless the arbitrator determines that exceptional circumstances require additional discovery, each party is entitled to the following discovery from any other party:

(i) Twenty-five interrogatories, including subparts;

(ii) Ten requests for admission; and

(iii) In accordance with applicable court rules:

(A) Requests for production of documents and things, and for entry upon land for inspection and other purposes; and

(B) Requests for physical and mental examinations of persons.

(b) The parties shall be entitled to the following depositions:

(i) Depositions of parties and any expert that a party expects to call as a witness. Except by order of the arbitrator for good cause shown, the length of the deposition of a party or an expert witness shall be limited to four hours.

(ii) Depositions of other witnesses. Unless the arbitrator determines that exceptional circumstances require additional depositions, the total number of depositions of persons who are not parties or expert witnesses is limited to five depositions per side, each of which may last no longer than two hours in length. In the deposition of a fact witness, each side is entitled to examine for one hour of the deposition.

(3) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

NEW SECTION. Sec. 309. (1) An arbitration under this chapter shall be conducted according to the time frames specified in this section. The time frames provided in this section run from the date all defendants have agreed to arbitration in their answers where the parties elected arbitration in the initial complaint and answer, and from the date of the execution of the stipulation where the parties agreed to enter into arbitration after the commencement of the action through a stipulation filed with the court. The arbitrator shall issue a case scheduling order in every case specifying the dates by which the requirements of (b) through (f) of this subsection must be completed.

(a) Within forty-five days, the claimant shall provide stipulations for all relevant medical records to the defendants.

(b) Within one hundred twenty days, the claimant shall disclose to the defendants the names and curriculum vitae or other documentation of qualifications of any expert the claimant expects to call as a witness.

(c) Within one hundred forty days, each defendant shall disclose to the claimants the names and curriculum vitae or other documentation of qualifications of any expert the defendant expects to call as a witness.

(d) Within one hundred sixty days, each party shall disclose to the other parties the name and curriculum vitae or other documentation of qualifications of any rebuttal expert the party expects to call as a witness.

(e) Within two hundred forty days, all discovery shall be completed.

(f) Within two hundred seventy days, the arbitration hearing shall commence subject to the limited authority of the arbitrator to extend this deadline under subsection (2) of this section.

(2) It is the express public policy of the legislature that arbitration hearings under this chapter be commenced no later than twelve months after the parties elect to submit the dispute to arbitration. The arbitrator may grant a continuance of the commencement of the arbitration hearing to a date more than twelve months after the parties elect to submit the dispute to arbitration only where a party shows that exceptional circumstances create an undue and unavoidable hardship on the party.

NEW SECTION. Sec. 310. (1) The arbitrator shall issue a decision in writing and signed by the arbitrator within fourteen days after the completion of the arbitration hearing and shall promptly deliver a copy of the decision to each of the parties or their attorneys.

(2) The arbitrator may not make an award of damages under this chapter that exceeds one million dollars for both economic and noneconomic damages.

(3) The arbitrator may not make an award of damages under this chapter under a theory of ostensible agency liability.

(4) With or without the request of a party, the arbitrator shall review the reasonableness of each party's attorneys' fees taking into account the factors enumerated in RCW 4.24.005.

(5) The fees and expenses of the arbitrator shall be paid by the nonprevailing parties.

NEW SECTION. Sec. 311. After a party to the arbitration proceeding receives notice of a decision, the party may file a motion with the court for a judgment in accordance with the decision, at which time the court shall issue such a judgment unless the decision is modified, corrected, or vacated as provided in section 312 of this act.

NEW SECTION. Sec. 312. There is no right to a trial de novo on an appeal of the arbitrator's decision. An appeal of the arbitrator's decision is limited to the bases for appeal provided in RCW 7.04A.230(1) (a) through (d) and 7.04A.240, or equivalent provisions in a successor statute.

NEW SECTION. Sec. 313. The provisions of chapter 7.04A RCW do not apply to arbitrations conducted under this chapter except to the extent specifically provided in this chapter.

Mandatory Mediation

Sec. 314. RCW 7.70.100 and 1993 c 492 s 419 are each amended to read as follows:

(1) No action based upon a health care provider's professional negligence may be commenced unless the defendant has been given at least ninety days' notice of the intention to commence the action. If the notice is served within ninety days of the expiration of the applicable statute of limitations, the time for the commencement of the action must be extended ninety days from the service of the notice.

(2) The provisions of subsection (1) of this section are not applicable with respect to any defendant whose name is unknown to the plaintiff at the time of filing the complaint and who is identified therein by a fictitious name.

(3) After the filing of the ninety-day presuit notice, and before a superior court trial, all causes of action, whether based in tort, contract, or otherwise, for damages arising from injury

occurring as a result of health care provided after July 1, 1993, shall be subject to mandatory mediation prior to trial except as provided in subsection (6) of this section.

~~((2))~~ (4) The supreme court shall by rule adopt procedures to implement mandatory mediation of actions under this chapter. The ~~(rules shall)~~ implementation contemplates the adoption of rules by the supreme court which will require mandatory mediation without exception unless subsection (6) of this section applies. The rules on mandatory mediation shall address, at a minimum:

(a) Procedures for the appointment of, and qualifications of, mediators. A mediator shall have experience or expertise related to actions arising from injury occurring as a result of health care, and be a member of the state bar association who has been admitted to the bar for a minimum of five years or who is a retired judge. The parties may stipulate to a nonlawyer mediator. The court may prescribe additional qualifications of mediators;

(b) Appropriate limits on the amount or manner of compensation of mediators;

(c) The number of days following the filing of a claim under this chapter within which a mediator must be selected;

(d) The method by which a mediator is selected. The rule shall provide for designation of a mediator by the superior court if the parties are unable to agree upon a mediator;

(e) The number of days following the selection of a mediator within which a mediation conference must be held;

(f) A means by which mediation of an action under this chapter may be waived by a mediator who has determined that the claim is not appropriate for mediation; and

(g) Any other matters deemed necessary by the court.

~~((3))~~ (5) Mediators shall not impose discovery schedules upon the parties.

(6) The mandatory mediation requirement of subsection (4) of this section does not apply to an action subject to mandatory arbitration under chapter 7.06 RCW or to an action in which the parties have agreed, subsequent to the arising of the claim, to submit the claim to arbitration under chapter 7.04A or 7.--(sections 305 through 313 of this act) RCW.

(7) The implementation also contemplates the adoption of a rule by the supreme court for procedures for the parties to certify to the court the manner of mediation used by the parties to comply with this section.

Collateral Sources

Sec. 315. RCW 7.70.080 and 1975-'76 2nd ex.s. c 56 s 13 are each amended to read as follows:

Any party may present evidence to the trier of fact that the ~~((patient))~~ plaintiff has already been compensated for the injury complained of from any source except the assets of the ~~((patient, his))~~ plaintiff, the plaintiff's representative, or ~~((his))~~ the plaintiff's immediate family ~~((or insurance purchased with such assets)).~~ In the event such evidence is admitted, the plaintiff may present evidence of an obligation to repay such compensation and evidence of any amount paid by the plaintiff, or his or her representative or immediate family, to secure the right to the compensation. ~~((Insurance bargained for or provided on behalf of an employee shall be considered insurance purchased with the assets of the employee.))~~ Compensation as used in this section shall mean payment of money or other property to or on behalf of the ~~((patient))~~

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

plaintiff, rendering of services to the ((patient)) plaintiff free of charge to the ((patient)) plaintiff, or indemnification of expenses incurred by or on behalf of the ((patient)) plaintiff. Notwithstanding this section, evidence of compensation by a defendant health care provider may be offered only by that provider.

Preventing Frivolous Lawsuits

NEW SECTION. Sec. 316. A new section is added to chapter 7.70 RCW to read as follows:

In any action under this section, an attorney that has drafted, or assisted in drafting and filing an action, counterclaim, cross-claim, third-party claim, or a defense to a claim, upon signature and filing, certifies that to the best of the party's or attorney's knowledge, information, and belief, formed after reasonable inquiry it is not frivolous, and is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause frivolous litigation. If an action is signed and filed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the action, counterclaim, cross-claim, third-party claim, or a defense to a claim, including a reasonable attorney fee. The procedures governing the enforcement of RCW 4.84.185 shall apply to this section.

PART IV - MISCELLANEOUS PROVISIONS

NEW SECTION. Sec. 401. Part headings and subheadings used in this act are not any part of the law.

NEW SECTION. Sec. 402. (1) Sections 105 through 108 and 110 of this act constitute a new chapter in Title 70 RCW.

(2) Sections 201 through 208 of this act constitute a new chapter in Title 48 RCW.

(3) Sections 305 through 313 of this act constitute a new chapter in Title 7 RCW.

NEW SECTION. Sec. 403. Sections 211, 212, and 213 of this act apply to insurance policies issued or renewed on or after January 1, 2007.

NEW SECTION. Sec. 404. Section 111 of this act expires July 1, 2006.

NEW SECTION. Sec. 405. Sections 112 and 210 of this act take effect July 1, 2006.

NEW SECTION. Sec. 406. If specific funding for the purposes of sections 105 through 112 of this act, referencing sections 105 through 112 of this act by bill or chapter number and section numbers, is not provided by June 30, 2006, in the omnibus appropriations act, sections 105 through 112 of this act are null and void.

NEW SECTION. Sec. 407. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

Senator Keiser spoke in favor of adoption of the committee striking amendment.

MOTION

Senator Keiser moved that the following amendment by Senators Keiser and Deccio to the committee striking amendment be adopted.

On page 52, line 34, after "(2)" insert "The certificate of merit must be executed by a health care provider who meets the qualifications of an expert in the action."

Renumber the sections consecutively and correct any internal references accordingly.

Senators Keiser and Deccio spoke in favor of adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Keiser and Deccio on page 52, line 34 to the committee striking amendment to Second Substitute House Bill No. 2292.

The motion by Senator Keiser carried and the amendment to the committee striking amendment was adopted by voice vote.

MOTION

Senator Carrell moved that the following amendment by Senators Carrell and Stevens to the committee striking amendment be adopted.

On page 60, after line 19, insert the following:

"Sec. 317. RCW 4.56.250 and 1986 c 305 s 301 are each amended to read as follows:

(1) As used in this section, the following terms have the meanings indicated unless the context clearly requires otherwise.

(a) "Economic damages" means objectively verifiable monetary losses, including medical expenses, loss of earnings, burial costs, loss of use of property, cost of replacement or repair, cost of obtaining substitute domestic services, loss of employment, and loss of business or employment opportunities.

(b) "Noneconomic damages" means subjective, nonmonetary losses, including, but not limited to pain, suffering, inconvenience, mental anguish, disability or disfigurement incurred by the injured party, loss of ability to enjoy life, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation, ((and)) destruction of the parent-child relationship, and other nonpecuniary damages of any type.

(c) "Bodily injury" means physical injury, sickness, or disease, including death.

(d) "Average annual wage" means the average annual wage in the state of Washington as determined under RCW 50.04.355.

(2) In no action seeking damages for personal injury or death may a claimant recover a judgment for noneconomic damages exceeding an amount determined by multiplying 0.43 by the average annual wage and by the life expectancy of the person incurring noneconomic damages, as the life expectancy is determined by the life expectancy tables adopted by the insurance commissioner. For purposes of determining the maximum amount allowable for noneconomic damages, a claimant's life expectancy shall not be less than fifteen years. The limitation contained in this subsection applies to all claims for noneconomic damages made by a claimant who incurred bodily injury. Claims for loss of consortium, loss of society and companionship, destruction of the parent-child relationship, and all other derivative claims asserted by persons who did not sustain bodily injury are to be included within the limitation on

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

claims for noneconomic damages arising from the same bodily injury.

(3) If a case is tried to a jury, the jury shall not be informed of the limitation contained in subsection (2) of this section.

NEW SECTION. Sec. 318. A new section is added to chapter 4.56 RCW to read as follows:

(1) In an action or arbitration for damages for injury or death occurring as a result of health care, or arranging for the provision of health care, whether brought under chapter 7.70 RCW, or under RCW 4.20.010, 4.20.020, 4.20.046, 4.20.060, 4.24.010, or 48.43.545(1), or any combination thereof, the total amount of noneconomic damages may not exceed one million dollars.

(2) The limitation on noneconomic damages contained in subsection (1) of this section includes all noneconomic damages claimed by or on behalf of the person whose injury or death occurred as a result of health care or arranging for the provision of health care, as well as all claims for loss of consortium, loss of society and companionship, destruction of the parent-child relationship, and other derivative claims asserted by or on behalf of others arising from the same injury or death. If the jury's assessment of noneconomic damages exceeds the limitation contained in subsection (1) of this section, nothing in RCW 4.44.450 precludes the court from entering a judgment that limits the total amount of noneconomic damages to those limits provided in subsection (1) of this section.

NEW SECTION. Sec. 219. A new section is added to chapter 4.56 RCW to read as follows:

In the event that the Washington state supreme court or other court of competent jurisdiction rules or affirms that section 318 of this act is unconstitutional, then the prescribed cap on noneconomic damages takes effect upon the ratification of a state constitutional amendment that empowers the legislature to place limits on the amount of noneconomic damages recoverable in any or all civil causes of action."

Renumber the sections consecutively and correct any internal references accordingly.

On page 61, line 15 of the title amendment, after "7.70.100", strike "and 7.70.080" and insert "7.70.080, and 4.56.250"

On page 61, line 17 of the title amendment, after "chapter" insert "4.56 RCW, and"

Senator Carrell spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Keiser spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senators Carrell and Stevens on page 60, line 19 to the committee striking amendment to Second Substitute House Bill No. 2292.

The motion by Senator Carrell failed and the amendment to the committee striking amendment was not adopted by voice vote.

MOTION

Senator Honeyford moved that the following amendment by Senator Honeyford and others to the committee striking amendment be adopted.

On page 60, after line 19, insert the following:

"**Sec. 317.** RCW 7.70.070 and 1975-'76 2nd ex.s. c 56 s 12

are each amended to read as follows:

(1) Except as set forth in subsection (2) of this section, the court shall, in any action under this chapter, determine the reasonableness of each party's attorneys fees. The court shall take into consideration the following:

~~((1+))~~ (a) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

~~((2))~~ (b) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

~~((3))~~ (c) The fee customarily charged in the locality for similar legal services;

~~((4))~~ (d) The amount involved and the results obtained;

~~((5))~~ (e) The time limitations imposed by the client or by the circumstances;

~~((6))~~ (f) The nature and length of the professional relationship with the client;

~~((7))~~ (g) The experience, reputation, and ability of the lawyer or lawyers performing the services;

~~((8))~~ (h) Whether the fee is fixed or contingent.

(2)(a) An attorney may not contract for or collect a contingency fee for representing a person in connection with an action for damages against a health care provider based upon professional negligence in excess of the following limits:

(i) Forty percent of the first fifty thousand dollars recovered;

(ii) Thirty-three and one-third percent of the next fifty thousand dollars recovered;

(iii) Twenty-five percent of the next five hundred thousand dollars recovered;

(iv) Fifteen percent of any amount in which the recovery exceeds six hundred thousand dollars.

(b) The limitations in this section apply regardless of whether the recovery is by judgment, settlement, arbitration, mediation, or other form of alternative dispute resolution.

(c) If periodic payments are awarded to the plaintiff, the court shall place a total value on these payments and include this amount in computing the total award from which attorneys' fees are calculated under this subsection.

(d) For purposes of this subsection, "recovered" means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and the attorneys' office overhead costs or charges are not deductible disbursements or costs for such purposes.

(3) This section applies to all agreements for attorneys' fees entered into or modified after the effective date of this section."

Renumber the sections consecutively and correct any internal references accordingly.

On page 61, line 15 of the title amendment, after "7.70.100," strike "and 7.70.080" and insert "7.70.080, and 7.70.070"

Senator Honeyford spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Keiser spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Honeyford and others on page 60, line 19 to the committee striking amendment to Second Substitute House Bill No. 2292.

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

The motion by Senator Honeyford failed and the amendment to the committee striking amendment was not adopted by voice vote.

PARLIAMENTARY INQUIRY

Senator Brown: "I'm not sure. This amendment isn't on my desk. I'm wondering if it's on everybody else's desk?"

MOTION

Senator Benson moved that the following amendment by Senator Benson and others to the committee striking amendment be adopted.

On page 60, after line 19, insert the following:

Sec. 317. RCW 4.22.070 and 1993 c 496 s 1 are each amended to read as follows:

(1) In all actions involving fault of more than one entity, the trier of fact shall determine the percentage of the total fault which is attributable to every entity which caused the claimant's damages except entities immune from liability to the claimant under Title 51 RCW. The sum of the percentages of the total fault attributed to at-fault entities shall equal one hundred percent. The entities whose fault shall be determined include the claimant or person suffering personal injury or incurring property damage, defendants, third-party defendants, entities released by the claimant, entities with any other individual defense against the claimant, and entities immune from liability to the claimant, but shall not include those entities immune from liability to the claimant under Title 51 RCW. Judgment shall be entered against each defendant except those who have been released by the claimant or are immune from liability to the claimant or have prevailed on any other individual defense against the claimant in an amount which represents that party's proportionate share of the claimant's total damages. The liability of each defendant shall be several only and shall not be joint except(~~(~~

~~(a)~~)a party shall be responsible for the fault of another person or for payment of the proportionate share of another party where both were acting in concert or when a person was acting as an agent or servant of the party.

~~((b) If the trier of fact determines that the claimant or party suffering bodily injury or incurring property damages was not at fault, the defendants against whom judgment is entered shall be jointly and severally liable for the sum of their proportionate shares of the claimants [claimant's] total damages.))~~

(2) If a defendant is jointly and severally liable under ~~((one of))~~ the exception~~((s))~~ listed in subsection~~((s))~~ (1)~~((a) or (b))~~ of this section, such defendant's rights to contribution against another jointly and severally liable defendant, and the effect of settlement by either such defendant, shall be determined under RCW 4.22.040, 4.22.050, and 4.22.060.

(3)(a) Nothing in this section affects any cause of action relating to hazardous wastes or substances or solid waste disposal sites.

(b) Nothing in this section shall affect a cause of action arising from the tortious interference with contracts or business relations.

(c) Nothing in this section shall affect any cause of action arising from the manufacture or marketing of a fungible product in a generic form which contains no clearly identifiable shape, color, or marking.

Sec. 318. RCW 4.22.015 and 1981 c 27 s 9 are each amended to read as follows:

"Fault" includes acts or omissions, including misuse of a product, that are in any measure negligent or reckless toward the person or property of the actor or others, or that subject a person to strict tort liability or liability on a product liability claim. The term also includes breach of warranty, unreasonable assumption of risk, and unreasonable failure to avoid an injury or to mitigate damages. Legal requirements of causal relation apply both to fault as the basis for liability and to contributory fault.

A comparison of fault for any purpose under RCW 4.22.005 through ~~((4.22.060))~~4.22.070 shall involve consideration of both the nature of the conduct of the parties to the action and the extent of the causal relation between such conduct and the damages."

Renumber the sections consecutively and correct any internal references accordingly.

On page 61, line 15 of the title amendment, after "7.70.100," strike "and 7.70.080" and insert "7.70.080, 4.22.070, and 4.22.015"

Senator Benson spoke in favor of adoption of the amendment to the committee striking amendment.

Senator Keiser spoke against adoption of the amendment to the committee striking amendment.

The President declared the question before the Senate to be the adoption of the amendment by Senator Benson and others on page 60, line 19 to the committee striking amendment to Second Substitute House Bill No. 2292.

The motion by Senator Benson failed and the amendment to the committee striking amendment was not adopted by voice vote.

The President declared the question before the Senate to be the adoption of the committee striking amendment by the Committee on Health & Long-Term Care as amended to Second Substitute House Bill No. 2292.

The motion by Senator Keiser carried and the committee striking amendment as amended was adopted by voice vote.

MOTION

There being no objection, the following title amendment was adopted:

On page 1, line 4 of the title, after "fees;" strike the remainder of the title and insert "amending RCW 5.64.010, 4.24.260, 18.71.015, 18.130.160, 43.70.075, 43.70.510, 42.56.400, 48.18.290, 48.18.2901, 48.18.100, 48.18.103, 48.19.043, 48.19.060, 4.16.190, 7.70.100, and 7.70.080; reenacting and amending RCW 42.17.310 and 69.41.010; reenacting RCW 4.16.350; adding new sections to chapter 7.70 RCW; adding a new section to chapter 48.18 RCW; adding a new chapter to Title 70 RCW; adding a new chapter to Title 48 RCW; adding a new chapter to Title 7 RCW; creating new sections; prescribing penalties; providing an effective date; and providing an expiration date."

MOTION

On motion of Senator Keiser, the rules were suspended, Second Substitute House Bill No. 2292 as amended by the Senate was advanced to third reading, the second reading considered the third and the bill was placed on final passage.

FORTY-FIFTH DAY, FEBRUARY 22, 2006

Senators Keiser, Deccio, Weinstein, Pflug, Franklin, Parlette, Rasmussen, Brandland and Shin spoke in favor of passage of the bill.

The President declared the question before the Senate to be the final passage of Second Substitute House Bill No. 2292 as amended by the Senate.

ROLL CALL

The Secretary called the roll on the final passage of Second Substitute House Bill No. 2292 as amended by the Senate and the bill passed the Senate by the following vote: Yeas, 48; Nays, 0; Absent, 0; Excused, 1.

Voting yea: Senators Benson, Berkey, Brandland, Brown, Carrell, Deccio, Delvin, Doumit, Eide, Esser, Fairley, Finkbeiner, Franklin, Fraser, Hargrove, Haugen, Hewitt, Honeyford, Jacobsen, Johnson, Kastama, Keiser, Kline, Kohl-Welles, McAuliffe, McCaslin, Morton, Mulliken, Oke, Parlette, Pflug, Poulsen, Prentice, Pridemore, Rasmussen, Regala, Roach, Rockefeller, Schmidt, Schoesler, Sheldon, Shin, Spanel, Stevens, Swecker, Thibaudeau, Weinstein and Zarelli - 48

Excused: Senator Benton - 1

SECOND SUBSTITUTE HOUSE BILL NO. 2292, as amended by the Senate, having received the constitutional majority, was declared passed. There being no objection, the title of the bill was ordered to stand as the title of the act.

MOTION

At 12:52 p.m., on motion of Senator Eide, the Senate adjourned until 12:00 noon, Thursday, February 23, 2006.

BRAD OWEN, President of the Senate

THOMAS HOEMANN, Secretary of the Senate

1020-S	Committee Report	1	2393-S2	Committee Report	1
1361	Committee Report	1	2457-S	Committee Report	2
1488-S2	Committee Report	1	2520	Committee Report	2
1523-S	Committee Report	1	2590-S	Committee Report	2
2155-S	Committee Report	1	2644	Committee Report	2
	Other Action	4	2645-S2	Committee Report	2
2292-S2	Other Action	32	2651-S	Committee Report	2
	Committee Report	1	2671	Committee Report	2
	Second Reading	11	2687	Committee Report	2
	Second Reading Amendment	11, 30, 31		Committee Report	2
	Third Reading Final Passage	32		Committee Report	2
2364					

FORTY-FIFTH DAY, FEBRUARY 22, 2006

2006 REGULAR SESSION

2690
 Committee Report 2
 2691-S
 Committee Report 2
 2704
 Committee Report 2
 2850-S
 Committee Report 3
 2871-S
 Introduction & 1st Reading 4
 Messages 4
 2879
 Committee Report 3
 2917-S
 Committee Report 3
 2932
 Committee Report 3
 2933-S
 Committee Report 3
 3033-S
 Committee Report 3
 3059-S
 Committee Report 3
 3114
 Committee Report 3
 3159
 Committee Report 3
 3222-S
 Committee Report 4
 5319
 Other Action 8
 Second Reading 8
 Second Reading Amendment 9, 10
 Third Reading Final Passage 11
 6379
 Second Reading 7
 Third Reading Final Passage 7
 6680
 Second Reading 8
 Third Reading Final Passage 8
 6686
 Second Reading 7
 6686-S
 Second Reading 7
 Third Reading Final Passage 7
 6787
 Second Reading 7
 6787-S
 Second Reading 7
 Second Reading Amendment 7
 Third Reading Final Passage 8
 8720
 Adopted 4
 Introduced 4
 9023 Ben Cabildo
 Confirmed 5
 9107 Carol Landa-McVicker
 Confirmed 5
 9259 Paul McDonald
 Confirmed 6
 9270 Lisa Parker
 Confirmed 6
 9283 Patricia Whitefoot
 Confirmed 6
 9308 Larry Sanchez
 Confirmed 6
 9338 James Carvo
 Confirmed 6
 PRESIDENT OF THE SENATE
 Reply by the President 8
 WASHINGTON STATE SENATE

Parliamentary Inquiry, Senator Brown 31
 Personal Privilege, Senator Deccio 5
 Personal Privilege, Senator Eide 4
 Personal Privilege, Senator Franklin 5
 Personal Privilege, Senator Prentice 5
 Point of Order, Senator Jacobsen 8
 Point of Order, Senator Roach 8